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ABSTRACT

Although the American Indian Self-Determination and Education Assistance Act became law in 1975, Indian people continued to encounter problems and barriers to the assumption of control over Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) programs. In June, 1977, the United States Senate conducted oversight hearings to take testimony from tribal representatives, the BIA, and IHS regarding their progress in implementing the Act, already a law for two and one-half years and for which implementing regulations and funding had been available for one and one-half years. On June 7, 1977, representatives from the BIA and IHS identified certain key implementation issues. On June 24, 1977, in Albuquerque, New Mexico, tribal witnesses addressed these issues, presented testimony regarding problems they had experienced in trying to contract continuing federal programs and services to be run by Indian tribes and organizations or in applying for self-determination grants, and proposed changes to the law and its administration by the agencies. Among the tribal witnesses were representatives from the National Tribal Chairman's Association, National Congress of American Indians, Navajo Nation, Central Council of the Tlingit and Haida Indians, All Indian Pueblo Council, Quinault Indian Nation, and Tanana Chiefs Conference. (SB)

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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT IMPLEMENTATION

HEARINGS

BEFORE THE

UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

IMPLEMENTATION OF PUBLIC LAW 93-638—THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

JUNE 7, AND 24, 1977

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT IMPLEMENTATION

TUESDAY, JUNE 7, 1977

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 5110, Dirksen Senate Office Building, Senator James Abourezk (chairman of the committee) presiding.

Present: Chairman Abourezk and Senator Melcher.

Staff present: Ernest Stevens, staff director; Alan Parker, chief counsel; Michael Cox, minority counsel; and Peter Batzle, professional staff member.

Chairman ABOUREZK. The Senate Select Committee on Indian Affairs will come to order.

These are hearings to conduct oversight on the implementation of Public Law 93-638—the Indian Self-Determination and Education Assistance Act.

The purpose of this hearing before the Select Committee on Indian Affairs is to take testimony from the Bureau of Indian Affairs and Indian Health Service regarding their progress in implementation of title I of the Indian Self-Determination and Education Assistance Act.

Public Law 93-638 was enacted by the Congress on January 4, 1975, and administrative regulations were published by the Interior Department in December of 1975. Special appropriations to implement the grant, technical assistance, and contract support provisions were included in the fiscal 1976 Interior Department budget. In summary, the law has been on the books for 2½ years; implementing regulations have been effective for 1½ years; and special appropriations have been available for the same time period.

Public Law 93-638, the Indian Self-Determination and Education Assistance Act, was passed in response to the desire of Indian peoples for maximum participation of Indian tribes in programs and services conducted by the Federal Government for Indians. The act provides that tribes and Indian groups can contract to provide the services that Government agencies deliver.

The committee has been advised of tribal expressions of dissatisfaction with the implementation of the act by the Bureau of Indian Affairs and the HEW's Indian Health Service. In addition, a variety of administrative officials have pointed out that the law does not resolve a number of issues which result in obstacles to the accomplishment of its purposes. The oversight hearings will accordingly focus on related levels of policy considerations regarding possible frustration of the intent of Congress. An examination of a range of technical and/or factual issues which have been identified as possibly constituting obstacles to the effective implementation of the law will be made.

I now place in the record a copy of Public Law 93–638—the Indian Self-Determination and Education Assistance Act.

[Public Law 93–638 follows:]

Public Law 93-638
93rd Congress, S. 1017
January 4, 1975

An Act

To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

Indian Self-Determination and Education Assistance Act.
25 USC 450 note.

CONGRESSIONAL FINDINGS

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

25 USC 450.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

25 USC 450a.
88 STAT. 2203
88 STAT. 2204

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

FED-INDIAN RELATIONSHIP

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

25 USC 450b. Sec. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

REPORTING AND AUDIT REQUIREMENTS

Record-keeping.
25 USC 450c.

Sec. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

88 STAT. 2204
88 STAT. 2205

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States.

PENALTIES

SEC. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

25 USC 450d.

25 USC 452.

WAGE AND LABOR STANDARDS

SEC. 7. (a) All laborers and mechanics employed by contractors of subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c).

25 USC 450e.

40 USC 276a note.

5 USC app. II.

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

25 USC 452.

INDIAN PREFERENCE

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

25 USC 1452.

88 STAT. 2205

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88 STAT. 2206

CARRYOVER OF FUNDS

SEC. 8. The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.

25 USC 13a.

25 USC 13, 52a.

TITLE I—INDIAN SELF-DETERMINATION ACT

Citation of title.
25 USC 450f note.

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

25 USC 450f.
25 USC 452.
25 USC 13, 52a.

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

LIABILITY INSURANCE

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

25 USC 450g.

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities

88 STAT. 2206

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88 STAT. 2207

42 USC 2001.

under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

Hearing.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

Liability insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

25 USC 450h.

25 USC 13, 52a.

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

88 STAT. 2207

88 STAT. 2208

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

(b) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

PERSONNEL

SEC. 105. (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

43 USC 1601 note.

Ante, p. 2204.

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

42 USC 2004a.

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

42 USC 2004b.
42 USC 215.

Ante, p. 2206, 2207.

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

50 USC app. 456.

42 USC 2001.

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended".

42 USC 4762.

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended—

(1) by deleting the word "and" after paragraph (3);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

42 USC 4723, 4743.

88 STAT. 2208

88 STAT. 2209

43 USC 1601 note.

42 USC 4723, 4743.

"(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a 'local government' and a 'general local government' also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of sections 203(c) and 303(d) of this Act, relating to reviews by the

Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments."

(e) Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

Certain tribal organization employees, coverage, rights, and benefits.
25 USC 450i.

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

Work injuries, compensation.
5 USC 8101.

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

Retirement.
5 USC 8301.

(3) To retain coverage, rights, and benefits under chapter 89 ("Health Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

Health insurance.
5 USC 8901.

(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5, United

Life insurance.
5 USC 8701.
88 STAT. 2209
88 STAT. 2210

States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code. 5 USC 8701.

(f) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

"Employee."

(h) For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of title 5, United States Code.

Regulations.

(i) The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

(j) Anything in sections 205 and 207 of title 18, United States Code to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, United States Code, or section 2072 of the Revised Statutes (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection wth any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

ADMINISTRATIVE PROVISIONS

25 USC 450j.

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act.

40 USC 270a.

WAIVER

ADVANCE PAY.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to

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minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

Contracts, term.

3 YR CONTRACTS

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.

RETROCESSION

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

FACILITIES & PROPERTY USE

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

PERSONAL SERVICES

TRUST

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

FAIR & UNIFORM SERVICES

(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of the Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

MINIMUM FUNDING

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SAVINGS

(h) The amount of funds provided under the terms of contracts entered into pursuant to sections 102 and 103 shall not be less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such contracts shall be utilized to provide additonal services or benefits under the contract.

PROMULGATION OF RULES AND REGULATIONS

25 USC 450k. SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this title.

(b)(1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Publication in Federal Register. (3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

REPORTS

25 USC 450l. SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request.

REASSUMPTION OF PROGRAMS

25 USC 450m. SEC. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may,

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88 STAT. 2213

under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he shall hold a hearing on such action within ten days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Notice and hearing.

EFFECT ON EXISTING RIGHTS

SEC. 110. Nothing in this Act shall be construed as— 25 USC 450n.

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the "Indian Education Assistance Act". Citation of title. 25 USC 455 note.

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections: 25 USC 452. JCM

"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students. 25 USC 455.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 305 (b)(2)(B)(ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, 25 USC 456. 88 STAT. 2213 88 STAT. 2214 such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

25 USC 457.

"SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students."

Report to congressional committees. 25 USC 457 note.

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:

25 USC 452.

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

20 USC 236.

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

20 USC 821 note.

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

20 USC 241aa note.

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

20 USC 631.

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

Indian-controlled community colleges.

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—SCHOOL CONSTRUCTION

Contract authority. 25 USC 458.

SEC. 204. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended.

20 USC 644.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

Program evaluation, report to Congress.

(f) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 20 USC 644. 548), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.

Appropriation. (g) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of $35,000,000 for the fiscal year ending June 30, 1974; $35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART C—GENERAL PROVISIONS

25 USC 458a. SEC. 205. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

25 USC 458b. SEC. 206. No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

25 USC 458c. SEC. 207. (a)(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Rules and regulations, publication in Federal Register. (3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

Publication in Federal Register. (b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

25 USC 458d. SEC. 208. The Secretary is authorized and directed to provide funds, pursuant to this Act: the the Act of April 16, 1934 (48 Stat. 596), as 25 USC 452. amended; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private

PREVIOUSLY
PRIVATE
SCHOOLS

school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section.

Report to congressional committees.

SEC. 209. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235).

25 USC 458e.

20 USC 1001 note.

Approved January 4, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1600 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: Nos. 93-682 and 93-762 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 120 (1974):
  Feb. 8, considered and passed Senate.
  Feb. 18, action of Feb. 8 vacated.
  Apr. 1, reconsidered and passed Senate.
  Dec. 19, considered and passed House, amended; Senate concurred in House amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 2:
  Jan. 4, Presidential statement.

Chairman ABOUREZK. The oversight hearings have been planned in two stages: Today, we will be receiving testimony from administration witnesses—BIA and IHS, and on June 24, we are scheduled to receive testimony from tribal witnesses at a hearing in Albuquerque, N. Mex. We project that review of administration testimony will enable the committee to specifically identify the significant policy and factual issues. On June 24, we will, consequently, be asking tribal witnesses to address their testimony to these identified issues and discuss preferred alternative solutions. Such solutions may take the form of amendments to the act, changes in the administration's regulations and/or adoption of different practices by the administration.

I would like to start out by welcoming the witnesses.

We have two panels of witnesses today. They are both from the administration. The first panel is from the Department of Interior and the second panel is from the Department of Health, Education, and Welfare.

Mr. Raymond Butler, Acting Deputy Commissioner of Indian Affairs will be first.

STATEMENT OF RAYMOND U. BUTLER, ACTING DEPUTY COMMISSIONER OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOSEPH W. GORRELL, ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT, BUREAU OF INDIAN AFFAIRS; LaFOLLETTE BUTLER, ACTING DIRECTOR, COMMISSIONERS SELF-DETERMINATION STAFF, BIA; THEODORE KRENZKE, DIRECTOR, INDIAN SERVICES, BIA; AND DONALD ASBRA, CONTRACTING OFFICER, BIA

Mr. BUTLER. Mr. Chairman, on my far left is Mr. Joe Gorrell, Assistant Director of Financial Management; on his immediate left is Mr. LaFollette Butler who has been on detail to the Washington office working extensively on the implementation of Public Law 93-638; to my far right is Mr. Don Asbra, our Chief of Contracting Services; and on my immediate right is Mr. Ted Krenzke, our Director of Indian Services.

Mr. Chairman, if I may this morning I will defer to your judgment whether to leave this on the record.

I will offer two apologies. One is that I sincerely, personally apologize for the lateness of our prepared witness statement. As you and I know there are other people who review our proposed statements and we still have a little educational process relative to our trust responsibilities.

Second, Mr. Chairman, I do apologize to you for the number of staff members that I have with me this morning. However, in my judgment this is a most serious piece of legislation. It has a serious concept and principle. It was my judgment that we needed the staff here. A number of them have worked on the implementation of this program since its inception.

Chairman ABOUREZK. I guess you have as many staff as you need so that is no problem. I do not even consider that an apology, but if you do I will accept it. I will object to the other one. [Laughter.]

Mr. Raymond Butler. Mr. Chairman, we welcome the opportunity to appear before this committee to answer questions relating to the administration of the Indian Self-Determination and Education Assistance Act of 1975. We expect the hearings to assist in the eventual revision of the regulations implementing Public Law 93–638, as well as reviewing the practicalities of administration. We hope that this discussion will lead to close cooperation between the Congress, the Indian tribes, and the Department in working to implement the goals of the act.

Public Law 93–638, signed into law on January 4, 1975, required that implementing regulations be promulgated within 10 months of enactment and contained prescribed benchmarks within that time frame for Indian consultation, for presentation to the committees of Congress and publication as proposed rulemaking. The regulations were published in final form on November 4, 1975, and became effective on December 4, 1975. We have now had 18 months of practical experience in the administration of the act.

I am certain that in these hearings, the committee will be discussing the aspects of our administration. First, though, let me say a few words about the framework within which we think the act and Indian self-determination should be viewed.

We regard Indian self-determination as being synonymous with Indian self-government. Legally and historically the U.S. Government, and the colonial government which was its predecessor, has dealt with Indian tribes as governments. The Indian policies of the past had one constant, the treatment of Indian tribes as governments. But to recognize the special relationship of the Federal Government to Indians as being a relationship between governments, and to extol the virtues and values of self-government is one thing; to follow where the acceptance of these principles lead is quite another.

Let me quote here from the noted legal scholar, Felix Cohen, on Indian self-government. He said, "Not all who speak of self-government mean the same thing by the term. Therefore let me say at the outset that by self-government I mean that form of government in which decisions are made not by the people who are wisest, or ablest, or closest to some throne in Washington or in Heaven, but rather by the people who are most directly affected by the decisions."

We view the Indian Self-Determination Act as a commitment by the Nation to the principle of the Federal-Indian relationship as being one between governments and to the principle of Indian tribal self-government. I think all of us need to realize that Public Law 93–638 is an all-important philosophy and spirit which should and will pervade the Nation's administration of Indian policy, a philosophy and spirit which should and will become a way of life for us.

However, in our implementation of the act, we have become aware of certain concerns of tribal leaders.

Although the act authorized us to waive any contracting law or regulation inconsistent with the purposes of the act, the assumption of operation of Bureau programs by a tribe is nevertheless through a contractual relationship. Such a relationship by its very nature may impose some limitations on the contractor, that is the tribal government, that may be inconsistent with the intent of the act. This needs further examination by the administration, the Congress, and the tribes.

The act does not relieve the Bureau of program responsibility. Tribal assumption of program operation under contract is another, a different, method for carrying out the Bureau's program responsibility.

We have attempted to work out these concerns in the regulations and in our administration of the act in coordination with the tribes.

The administration stands ready to work with the Congress and the Indian tribes to fully insure the goals of the act and to carry out our responsibility in implementing those goals. It is through oversight hearings, such as this, that a scrutiny of implementation to date may identify concerns of the committee and the Indians, so that we may all work together to insure that such concerns are identified and addressed.

Mr. Chairman, if I may I would like to add further that: Although the concepts and principles announced in the act are applicable basically to the Bureau of Indian Affairs and to the Indian Health Service, as the Indian tribes have moved forward in their dealings with other Federal agencies in the Government it is my judgment that the concepts and principles of Public Law 93–638 are to give the basic option to Indian tribes for a local delivery system. These concepts and principles should, perhaps, become equally applicable to all of the other Federal agencies.

I have talked with a number of Indian leaders. We have talked about their concerns over title XX legislation and the way in which it is administered on their behalf. They have concerns over the language of the Older Americans Act. They have concerns over language of the Comprehensive Employment and Training Act. They have desires to redesign and to implement these types of programs in a manner which in their judgment would best serve their people at the local level.

In addition to the specifics of Public Law 93–638, it is our judgment that self-determination philosophy goes far beyond the areas of the exercise of tribal government powers and their sovereign powers that remain. In the personnel selections that are made—particularly in the key personnel selections that are made—we have that concern. In the tribal governmental operated program at the local level where we use the Buy-Indian Act authority basically is a concern.

In the budget process itself one of the things that has concerned me is this. Mr. Chairman, I particularly relate to my former experiences in the social services field at which time, in the not too distant past, we were contracting more of the programs than any of the other programs within the Bureau. This has been the adversary role in the negotiation process which we are placed in with respect to the Indian leaders and the Indian people.

During my short reign of terror here, as some people refer to it, I have convinced certain people to take a look at our budgetary process as it relates to what self-determination in tribal government services really means. We are at this time giving very serious consideration to restructuring the BIA budget to the maximum extent possible on a tribe-by-tribe basis rather than a program-by-program or a function-by-function basis. In my judgment this traditional program-by-program structure of the BIA Federal budget fails to recognize the complex nature of tribal communities and their many interdependent parts and facets.

Problem-solving is of such a complexity that it demands a discipline with a locally designed comprehensive approach. Such an approach is often frustrated by the present rather rigid program structure of the BIA budget. Restructuring of the program and the budget process on a tribal basis will provide the flexibility required for local program development both in the planning and the execution stages. A tribally oriented budget structure will encourage realistic disciplined tribal planning which has often been frustrated by the rigidity of the present program structure. It will allow tribal leaders to select the most effective program mix to meet their unique situation and to make adjustments in current year operations to recognize changing conditions on their reservations.

The current budget structure in my judgment is often far more responsive to decisionmaking far removed from the local scene than it is to tribal officials.

I might parenthetically comment, Mr. Chairman, that recently when I was discussing this concept with some of the National Tribal Chairman's Association members I pointed out to them that we are looking at this type of structure. There are many pros and cons. I do not know whether it will work. There will be bugs in it to start with.

I made the comment that I wanted their views. I inadvertently made the statement that if they thought I was all wet in this approach to please tell me. Not to my real surprise, one of the tribal chairman raised his hand in the back of the room and, as I recognized him he said, "Commissioner, a few minutes ago you invited us to comment. You are all wet."

Thank you, Mr. Chairman. We are pleased to respond in dialogue with the committee as we proceed on the oversight hearings.

Chairman ABOUREZK. What do you see as the purpose of Public Law 93–638? What is your conception of what its purpose was and is?

Mr. RAYMOND BUTLER. In my judgment, Mr. Chairman, I reflect upon my experiences in the area of social services. The purpose is to give the respective Indian tribes the option to deliver the type of services which they feel their community members need at the local level and to redesign those programs in a manner which, in their judgment, will best serve their people.

Chairman ABOUREZK. Has that end been accomplished?

Mr. RAYMOND BUTLER. Mr. Chairman, I think it is only a beginning.

Chairman ABOUREZK. What is "only a beginning?"

Mr. RAYMOND BUTLER. It is only the beginning in effecting the real concepts and principles of Public Law 93–638. A number of the tribes were somewhat hesitant to begin with. Other tribes moved in quite rapidly. I am thinking particularly of the Eastern Band of the Choctaws in Philadelphia, Miss., which have moved in quite rapidly to the concepts of delivering the system. On the Navajo Tribe, for example, the entire general assistance program has been for a number of years delivered locally by the Navajo tribal government.

Chairman ABOUREZK. Public Law 93–638 has been law a little over 2 years now. Do you remember the exact date it was signed into law?

Mr. Raymond BUTLER. Yes, January 4, 1975.

Chairman ABOUREZK. Two-and-a-half years then.

You say that the implementation of Public Law 93–638 has only just begun; is that right?

Mr. RAYMOND BUTLER. Yes; the act required us to set forth the regulations for its administration within a 10-month period. They were published in November and became final in December of 1975 so that basically we have only been into the administration of Public Law 93–638 for about 18 months now.

Chairman **Abourezk**. Do you believe that 10 percent of the purposes of Public Law 93–638 have been accomplished, or 20 percent, or what would you estimate as to the percentage amount of its purposes as being accomplished?

Mr. **Raymond Butler**. Mr. Chairman, in measuring it in terms of contracts and dollar volume—and I do not wish to sound facetious in this area—it is purely coincidental that as of March 31 of this year we have 638 contracts. [Laughter.]

The dollar volume of this amount is in the neighborhood of $127 million of our budget. So in that respect, budgetwise, we are a little over 15 percent.

Chairman **Abourezk**. $127 million is out on 638 contracts?

Mr. **Raymond Butler**. Yes.

Chairman **Abourezk**. What are those contracts for? What categories are they in? Are they for the delivery of services, or for training of the tribal people and the handling of their own contracts?

Mr. **Raymond Butler**. Mr. Chairman, we have $41 million in education. We have $34 million in social services programs.

Chairman **Abourezk**. What was the amount for social services?

Mr. **Raymond Butler**. $34 million.

In the Indian action team program we have $19.5 million. In law enforcement we have $4.6 million. In natural resources we have $3.5 million. In the housing program we have $2¼ million. And in the forestry program we have $1½ million as examples of the programmatical types which tribes are taking under contract.

Chairman **Abourezk**. We sent you a list of questions in advance which we had asked the BIA to respond to. I want to refer to some of those questions now.

On questions No. 6, 9, 10, and 11 which relate to statistics regarding money allocations for contractors, the money retained by the Bureau for contract administration and money put out as advance payments. The answers you provided show no available statistics.

I am curious to know why the BIA cannot identify and designate the budget items such as administration, advance payments, and allocations to contractors. Also, what administrative steps are you taking to provide accurate information for such matters in the future?

Mr. **Raymond Butler**. Mr. Chairman, I can only comment that the reporting system that we have devised simply does not afford us the opportunity to identify those at this time.

I will ask Mr. Gorrell to comment further on this about our data processing system. But as I understand it we have not necessarily separated the Public Law 93–638 funding. For example, in the staffing requirements we have three positions occupied at the present time in Washington which are being exclusively paid for from Public Law 93–638 funds. The other staffing positions in contracting and policy development have been intermeshed with the general administration of the Bureau programs so that we do not at this time have the capacity to identify that.

Chairman **Abourezk**. You mean you don't have the capacity? You don't have the bookkeepers?

Mr. Raymond Butler. The EDP system.

Mr. Gorrell would you like to comment?

Mr. Gorrell. Mr. Chairman, to follow up on the position issue first of all: We have 48 positions authorized by Congress for self-determination activities. Those positions are in fact being filled but not necessarily financed from self-determination funds. For example, Mr. Butler and his staff on the Commissioner's staff are financed from our management administration account.

Chairman Abourezk. May I interrupt just a moment? I would appreciate it if you would not get off the subject of the question. You are talking about something totally different. I am sure we will get around to asking about the positions being filled and so on.

I am curious to know now why you cannot identify payments that have been made for the things that have been mentioned—such as allocations to contracts and so on. I want to know why you haven't done it and if you are going to do it in the future.

Mr. Gorrell. As Mr. Butler has already indicated, we do not have at this time specifically identified in our finance system contracting that is specifically 638. All contracts are in the system and we are able to identify contracting items but not necessarily distinguishing 638 contracts per se.

Chairman Abourezk. You seem to have some figures on 638 contracts. You were talking about $127 million. We have those. Why can't you identify administration outlays?

It is really no problem. In fact, I think you would be almost obligated on a cost-accounting basis to separate what you are doing on 638 apart from what you are doing otherwise.

Is it a question that you do not have enough bookkeepers or you didn't do it or what?

Mr. Gorrell. I am trying to understand your question. I think what you are asking is this. On 638 contracts: Do we know exactly how much money is being spent for the administration of those 638 contracts? Is that right?

Chairman Abourezk. The precise question which we submitted to you in writing in advance of the hearings was this, "How much money was retained by the agencies for the administration of 93–638 contracting?" That is question No. 6.

Question No. 9 asks: "How many requests have been made for advance payments, and how much money was requested out of the total cost of the contract?"

Question No. 10 asks: "How many were turned down and for what reasons?"

Question No. 11 asks: "How many were subsequently awarded?"

The answers that you sent back to us were "No available statistics."

My question is this: Why not?

Mr. Raymond Butler. On question No. 6, it is very true that we did not separate out in our cost accounting system exclusively the 638 contracts. They were all amalgamated into the total contracting procedure which includes those contracts under the Buy-Indian Act authority and contracts under the Johnson-O'Malley Act authorities and contracts under AVT and on-job training of Public Law 959. We admit that we did not categorize those out and separate them out.

Chairman **Abourezk**. The question is: Why not?

Mr. **Raymond Butler**. We have initiated a procedure now which I hope by September will give us a handle exclusively onto the type of authorities that we use for the contract. But, Mr. Chairman, it was not done.

Chairman **Abourezk**. I know that. You have admitted that in your written answer.

When you say that, hopefully, by September you will have a handle on it: What does that mean? Does that mean that you are going to be able to separate those from now on?

Mr. **Raymond Butler**. We will try to do our best to separate those.

One of the problems, Mr. Chairman, that we have is that a contracting officer has to serve on all of those types of contracts. We do not have the luxury of having a contracting officer who works only with 638 contracts. He must also work on other types of contracts that we have.

Chairman **Abourezk**. But you do have the luxury of that contracting officer dividing his time and reporting: Don't you?

Mr. **Raymond Butler**. On a time study basis we hope to get a handle on it.

Chairman **Abourezk**. Are you saying now that you intend to start the procedure right away or are you going to start it later on, or what?

Mr. **LaFollette Butler**. Mr. Chairman, we have maybe a misunderstanding of two different ways that that question might be understood.

Chairman **Abourezk**. Excuse me just a moment. I have to go vote on the floor. So I must interrupt at this point and come back in just a moment.

We will recess the hearing for 10 minutes.

[Recess taken.]

Chairman **Abourezk**. The committee will come back to order.

We have learned insofar as administrative costs are concerned that you have no figures. You do not have figures showing how much of the BIA administration money has gone to 638 administration. I suppose we have a commitment from you that you intend to begin that procedure of separating out those moneys: Is that correct?

Mr. **Raymond Butler**. That is correct, Mr. Chairman.

Chairman **Abourezk**. May I ask how long do you believe it will be before you are able to give an answer to the committee to these questions 6, 9, 10, and 11?

Mr. **Raymond Butler**. May I ask Mr. LaFollette Butler to speak to this?

Mr. **LaFollette Butler**. I am not sure that I could make a commitment, Mr. Chairman, as to how long it would take us to pick this up now for the purposes of this hearing. We can certainly make the attempt and get it to you as soon as possible.

Chairman **Abourezk**. Mr. Butler, will you give us those figures from the time 638 started?

Mr. **LaFollette Butler**. We will make that attempt, sir.

Chairman **Abourezk**. When you say "make the attempt," you do not consider that to be an impossible request, do you?

Mr. Raymond Butler. Mr. Chairman, it may in some aspects be somewhat subjective because the contracting officer who has served as the contracting officer on 638 has also had the responsibility for contracting services on Buy-Indian and so on. It may be somewhat subjective to go back retroactively and ask each one of the contracting officers, "Can you tell us how much specific time you spent" so that we can prorate his salary to determine what actual dollars went in.

Chairman Abourezk. You would do that?

Mr. Raymond Butler. We will attempt to do that; yes.

Chairman Abourezk. I have been in business, and I have been a practicing lawyer, and many times I have gone back over the time I have allocated for different projects and cases. It is not all that tough to do. When you go back over it it is not precise. I understand that. But it is possible to do it, and I am very hopeful that we will have an answer from the BIA within a short time. If not, we will have another hearing, and we will ask the same questions on the public record.

So, if we ask you next week what the administrative portion of 638 was from today until next week, then you would be able to give it to us; wouldn't you?

Mr. Raymond Butler. Mr. Chairman, is the committee thinking exclusively of the contracting administration part—all of the data servicing part? For example, on the advance payments question, although we have no specific figures, it would be my empirical judgment that by and large the majority of all of those tribes received an advance payment in certain amounts as was necessary for their startup costs. In addition, where we have used the letter of credit procedure, in effect the entire amount of the contract is available for an advance drawdown as the tribes may need it.

Chairman Abourezk. I am talking about administration by the BIA.

I would like to repeat the question.

If I were to ask you next week what the administrative portion of the 638 money has been from today on until next week; would you be able to tell me that or not?

Mr. Raymond Butler. Exclusively the 638 appropriated funds?

Chairman Abourezk. Absolutely.

Mr. Raymond Butler. Yes. That part we can pull down.

What I was referring to, Mr. Chairman——

Chairman Abourezk. What I am referring to is this. I am firmly convinced that the BIA has for years been commingling moneys when they should not be commingling them. I think the practice ought to stop. I think it ought to start to stop with Public Law 93-638.

Mr. Raymond Butler. I see your point.

Chairman Abourezk. There is no way we are going to determine whether this program or any other program is effective unless we know exactly how much is going to administration and how much is getting to the tribes. If you cannot tell us, there is no other way we can find out unless we have GAO go in with an audit. If you want a GAO audit, we will have to do that. Otherwise we will accept your figures.

Mr. Raymond Butler. Mr. Chairman, on the 638 appropriated funds; yes. But what we misunderstood is the part of the question that involved in the 638 process all of the programmatic funds that are appropriated to the Bureau.

Chairman **Abourezk**. What other programmatic funds are appropriated to the Bureau of 638 money?

Mr. **Raymond Butler**. We use the 638 authority in our welfare and social services contracts, in our law enforcement services contracts, all of that programmatical money.

Chairman **Abourezk**. You have administrative costs for putting out that money; don't you?

Mr. **Raymond Butler**. The programmatical money?

Chairman **Abourezk**. Yes.

Mr. **Raymond Butler**. No, sir. The programmatical money where the tribe takes it under contract goes dollar-for-dollar to the tribe.

Chairman **Abourezk**. All right, then you have no administrative costs, for that money. Is that right?

Mr. **Raymond Butler**. Mr. Gorrell wants to correct me.

Chairman **Abourezk**. Can anybody else respond?

Mr. **Gorrell**. We, indeed, have administrative costs with any contract, including 638 contracts, Mr. Chairman. Yes, sir.

Chairman **Abourezk**. But you do not know what those costs are?

Mr. **Gorrell**. I don't have the material here but I can get it for the record before this hearing is over. We provided it to the Senate subcommittee on our appropriations recently. It was an estimate of our administration costs for the 1978 budget request.

Chairman **Abourezk**. That is for next year?

Mr. **Gorrell**. Yes.

Chairman **Abourezk**. What about past administrative costs?

Mr. **Gorrell**. We can make that same estimate for 1977. It is made up of essentially four elements. We have our common services program which everybody calls our "3599 program." This is an addon to our program funds across the board for education, Indian services, and so on, including self-determination.

We also have management administration which finances people like the Commissioner and his immediate staff.

Chairman **Abourezk**. I don't need to hear that. We are interested in this one thing for the moment. We are interested in whether or not you have broken down administrative costs for 638 administration. If you have not, then my question is: Are you going to do that for us? You have already responded affirmatively to that and you intend to do that on an estimated best basis for the past. You will do it on a precise basis for the future beginning today. Is that correct?

Mr. **Raymond Butler**. Yes; Mr. Chairman.

Let me say that we will do the very best we can to break that down. We have clarified that exclusive to the 638 funding level. We can do that.

Chairman **Abourezk**. The next question that you were unable to respond to when you said you had no available statistics is this. I would appreciate very much if the witnesses would respond and stay on the issue because it will just require me to interrupt you and rephrase the question.

The question was, "How many requests have been made for advance payments and how much money was requested of the total cost of the contract?" You say you have no statistics available for that question.

My question is: Why not?

Mr. Raymond Butler. We can get that, Mr. Chairman. We will supply that.

Chairman Abourezk. Could we have those figures?

Mr. Raymond Butler. Yes.

Chairman Abourezk. You will provide them for the committee?

Mr. Raymond Butler. Yes.

Chairman Abourezk. When?

Mr. Raymond Butler. About 2 weeks, Mr. Chairman.

Chairman Abourezk. Another question you did not answer on the interrogatory that we sent you is this. "How many contracts were turned down and for what reason?"

Mr. Raymond Butler. Mr. Chairman, to the best of my knowledge there have been no contracts declinations to this time.

Mr. LaFollette Butler. That is correct. That is a technical answer I would like to expand on, Mr. Chairman. We have had no contracts that have been declined in accordance with the declination criteria contained in the act. There have been some contracts that have not been completed because of other considerations other than the three declination criteria that are in the act.

Chairman Abourezk. What were those reasons?

Mr. LaFollette Butler. The principal reasons are the amount of funding. For the most part, these are contracts where the contract proposals in the multitribal agency situation where the amount of money that the one tribe that wants to contract—or two tribes or whatever wants to contract—is more than their share of the total agency program. In those cases because the amount of the funds in the proposed contract is more than the amount available and we were not able to make up that difference, the contracts did not go to completion.

One other example is the case where the fiscal year ended during the period of time while the contracting process was running. The money that had been asked for was year-end money to be made available for that contract and it was not a regular program item that would appear in the next fiscal year. Therefore, since the obligation could not be made in the fiscal year the money was no longer available. We have had, maybe, a half dozen of those. I do not have a number on the first instance of where you have the multitribal situation where the proposal is in excess of the amount available, however.

Chairman Abourezk. Your response was that you had no available statistics for the number of contracts that had been turned down.

Mr. LaFollette Butler. Right.

Chairman Abourezk. Why not?

Mr. LaFollette Butler. The system that we are installing, which will be completed by the first of this fiscal year, will have that.

Chairman Abourezk. What system are you talking about?

Mr. LaFollette Butler. We have an automated reporting management and evaluation system which we are in the process of working on. That is to be completed by the beginning of the next fiscal year. We, at that time, will go back and pick up all of the previous contracts such as this and be able to track in the future those that are proposed and do not go to completion.

Chairman Abourezk. Do you mean to say that without such an automated system there is no way for you to determine how many contracts you have turned down and how many you have accepted?

Mr. **LaFollette Butler**. There is a way.

Chairman **Abourezk**. What would that way be?

Mr. **LaFollette Butler**. It would be to get in touch with the contracting officers in the areas and get the count.

Chairman **Abourezk**. How many contracting officers would you have to get in touch with? Would they have the records?

Mr. **LaFollette Butler**. Yes. They would have to go through the records and they could get that. Let me correct that. You would also have to go to the agencies and to the area people, aside from contracting because it may occur that the contract proposal was turned down at some time before it got to the formal contracting negotiation stage.

Chairman **Abourezk**. There would be a record; wouldn't there?

Mr. **LaFollette Butler**. Yes.

Chairman **Abourezk**. Is there any reason that you cannot provide those statistics to this committee?

Mr. **LaFollette Butler**. No, sir. We can provide it. It would take more time than we had for these. We can provide it.

Chairman **Abourezk**. How long will it take you to provide that?

Mr. **Raymond Butler**. My contracting officer advises me that we can do that simultaneously with the previous requests for question 9, and we can do it in 2 weeks.

Chairman **Abourezk**. You can do it in 2 weeks time?

Mr. **Butler**. Yes.

Chairman **Abourezk**. How about question No. 11 after you decline the contract for whatever reason. How many did you then subsequently award? Can you get that answer at the same time?

Mr. **Butler**. Yes.

Chairman **Abourezk**. On questions Nos. 13, 14, and 15—which we sent you in the interrogatory—you have just stated, and we also heard, that a number of contract applications had been turned down because of insufficient funds.

Your answers to these questions indicate one reason for rejecting a contract proposal is that the contract amount exceeds the secretarial funding level for the program.

If a contract proposal is for an amount in excess of secretarial funding levels, would that contract be declined or returned on the grounds of lack of funds?

Mr. **Raymond Butler**. Mr. Chairman, in all probability, it would unless some accommodation could be made. Let me go back to my opening remarks that this is exactly the reason why I feel that we need to budget on a tribe-by-tribe basis—so that throughout the entire process the tribes have the input into our budgetary process which would give them the opportunity to know where the secretarial funding level really lies. At the present time, Mr. Chairman, this is hidden away in my judgment in a budget based on a program-by-program concept. For example, we go forward and we ask for $30 million for higher education and we ask for $50 million for forestry. In my judgment the tribes do not know where they are at within that program-type budget. This is what I referred to earlier when I said that in my judgment we are in an adversary role as to the tribes that we should not be in.

Mr. **LaFollette Butler**. Mr. Chairman, may I elaborate on that?

Chairman **Abourezk**. Certainly.

Mr. LaFollette Butler. The fact that a contract does not go to completion because of a lack of funds or a lack of adequate funds is not, under the law, nor under our regulations, a declination. The declination criteria is very specific in the law. In the development of the regulations we adhere very strictly to what the law provided about what is a declination issue so that the lack of funding or inadequate funding, is a reason for not going through with the contract, but technically speaking it is not a declination. I do not want to appear technical because it is a problem that we need to deal with.

In our earlier simultaneous efforts when we were developing regulations soon after the law was passed we recognized that when you contract, particularly in the multitribal agency situation, you are going to have added costs because of program or because of contracting.

We attempted, without success, to get an appropriation for added programmatic costs due to contracting. We were not successful in that effort, but we recognize that when you have one program administration with the BIA operating the program for several tribes—when you try to break that out and pull one or two tribes or three tribes out then there is added programmatic cost.

I do not see any solution other than more money. But maybe somebody else here knows better. We are in the process of revising the regulations. Hopefully we can come up with something that will alleviate that. Some people have suggested that the lack of funding be a declination issue. We are still open on that. We have not decided as yet whether or not we will make it a declination issue.

Chairman Abourezk. You are entitled to do that under the law.

Mr. LaFollette. Butler. I am not sure whether we are or not.

Chairman Abourezk. Even if it does not say it in the law, obviously it is a declination if you turn down the contract for reasons of lack of funds.

What is wrong with using that as a reason for declination and stating that there is a lack of funds? It doesn't seem to me that there is anything wrong with that at all.

[No response.]

Question No. 19 of the interrogatory that we sent you: The answer indicates that roughly 25 percent of money allocated for technical assistance is devoted to BIA staff expenses. The balance is allocated to training and technical assistance.

Presumably much of this money was also directed to payment in support of BIA staff.

How much money actually went to the tribes or entities outside of BIA to obtain or to provide technical assistance?

Mr. Raymond Butler. Mr. Chairman, I will ask Mr. Krenzke to respond to that. He is involved in that.

Mr. Krenzke. What it indicates is that there is approximately $1 million out of the $4.5 million or $4.6 million has gone to pay for Bureau staff. The bulk has gone out to the area offices to be made available in consultation with the tribes, either directly to the tribes for technical assistance or to organizations which the tribes direct that the money be made available to.

It may be that a tribe, for instance, in terms of their technical assistance, is having trouble with the bookkeeping and the tribe has an accounting firm that is working with them and providing assistance. The tribe might direct that these funds go and become available to the accounting firm that they are working with. It may be that the tribe is working with a college or university or with an Indian consulting firm. The balance of the funds, other than that for Bureau staff, is made available directly on a contractual arrangement.

Chairman **Abourezk.** I would like to have Mr. Stevens refer specifically to an incident that he knows about.

Mr. **Stevens.** I want to ask about the technical assistance contract in the Phoenix area office. What I was trying to point out to the chairman was this: You are referencing providing assistance to tribes.

I would like to know whether or not the technical assistance contract to the University of Arizona was an unsolicited proposal and whether or not it was advertised and whether or not there were Indian subcontractors?

Mr. **Krenzke.** I am not familiar with the specifics of that. I know they have one there. The thing that I am familiar with is the directives that we made to the area offices and the utilization of the technical assistance funds that would be made out at the area level in consultation with tribes and upon the advice of the tribes relative to their needs. But I can get that information for the record.

Chairman **Abourezk.** Would you submit that within a 2-week period?

Mr. **Krenzke.** Yes.

Chairman **Abourezk.** Specifically answer the questions that the staff director has asked. If you are unclear after the hearing, Mr. Stevens would be glad to write those down.

Mr. **Krenzke.** We will certainly do it.

Let me continue just a moment. I did point out that there is $1 million out of the $4.5 million that goes for Bureau staff out of the training technical assistance. This is all administered through our Division of Self-Determination Services. This Division also has the responsibility for the grants program and for the contract support.

The thing that I want to mention to you is this. Some of the administrative costs of the contract support end of the grants program is also absorbed under this technical assistance part so that the entire amount of the grants for fiscal year 1977 is $16.5 million and goes directly to the tribes with nothing out of it for BIA administrative costs.

Similarly, the entire amount for contract support goes directly out to the tribes with no BIA overhead. The overhead is absorbed through this training and technical assistance for the positions that we are talking about.

Chairman **Abourezk.** Can Public Law 93-638 grant money be used to pay salaries or expenses of tribal officials?

Mr. **Raymond Butler.** Only, Mr. Chairman, as it may directly relate to their functions in the Public Law 93-638 program aspects.

Chairman **Abourezk.** In view of the Inter-Governmental Personnel Act and in view of those ceiling limitations when an employee is loaned out on a BIA assignment. Do you have an opinion as to whether any amendments to the BIA Act need to be effected?

Mr. **Raymond Butler.** Only in this respect, Mr. Chairman: At the present time if the tribe pays less than one-half or more of the salary, then the position counts against our ceiling. I would carry this a step further if I may. There is an inter-related issue here too. At the present time, I understand from my staff, that we have in the neighborhood of a little over 1,200 positions that are funded by tribal funds.

Mr. **Gorrell**. There are 450 but that includes some irrigation construction.

Mr. **Raymond Butler**. It is between 400 and 450 positions, Mr. Chairman, that are charged to the Bureau's ceiling which are actually funded by the tribes. This is an inter-related situation also.

It would be of assistance to us in the IPA system if the ceiling were not charged against us when we loaned the individual out to the tribes.

Chairman **Abourezk**. Would that require an amendment to the IPA Act?

Mr. **Butler**. I believe it will. I am informed that it will by Mr. Gorrell.

Mr. **LaFollette Butler**. Mr. Chairman, may I add a thought to that?

Chairman **Abourezk**. Certainly.

Mr. **LaFollette Butler**. There has been a study, I think it was sponsored by the Department of Defense and made by the Comptroller General, concerning a method for having or controlling employment through fiscal controls rather than through an employment ceiling control.

The thing that happens now is that when a tribe contracts, in order to meet the obligation with regard to retrocession, we are requiring that those positions and the authorized position and the employment ceiling be put into a reserve and held in the event there is retrocession.

Those employment ceilings will be of no use to us. We cannot use them. We have made the promise that we are going to keep them in the event of retrocession off that particular contract. So, we have the situation then where more and more we are going to have positions in the reserve and not be able to use them and yet they count against us. They count against our employment ceiling.

It seems to me that this committee might want to look into the study that was made by the Comptroller General. I do not have the title right here with me. We could get that for you. We could see whether or not you might want to consider that as an alternative to employment ceiling that is using the fiscal control rather than the employment ceiling control.

Chairman **Abourezk**. Let me ask you this along the same line. Have there been any decreases in the numbers of BIA personnel as a result of Public Law 93–638 contracts?

Mr. **Raymond Butler**. Mr. Gorrell, to my knowledge there has been no significant decrease.

Mr. **Gorrell**. That is correct.

Chairman **Abourezk**. How about any decrease at all—significant or insignificant?

Mr. **Raymond Butler**. I am advised, Mr. Chairman, that employment is running about the same as it was.

Chairman **Abourezk**. Do you think that in order to fulfill the purposes of Public Law 93–638, which is to transfer more of the power and money and work over to the tribes, that there ought to be some sort of a decrease in BIA personnel levels? Would that not fulfill the objectives of Public Law 93-638?

Mr. **Raymond Butler.** Yes; Mr. Chairman. In my judgment, as we move forward with the implementation of Public Law 93-638, we will reach the point in time where there will be a concurrent reduction in Federal employment as tribal employment increases.

Chairman **Abourezk.** Do you have figures on how much tribal employment has increased as a result of Public Law 93-638?

Mr. **Raymond Butler.** No, sir, we tried to get a handle on it as we prepared for these hearings. At this time we do not have that exclusive as far as Public Law 93-638 is concerned. Again, Mr. Chairman, it is commingled with our lack of a sophisticated enough reporting system to get that. I think we could go back and dig that out. As we have indicated to you, Mr. Chairman, we will do that as we have indicated for the other questions you have asked.

Chairman **Abourezk.** That is good. Thank you. It would seem to me that that is a very important part of your determining whether or not Public Law 93-638 is working.

Chairman **Abourezk.** Also we are talking about how much the tribes are allowed to contract out and whether or not, with respect to personnel, it is succeeding by taking a load off the Bureau and getting people out of the bureaucracy and into the tribal bureaucracy if that is what you want to call it.

It seems to me that that would be essential for you to know that. It would be essential, in fact, for the tribes to know it.

Mr. **Raymond Butler.** I agree.

Mr. **Parker.** Mr. Butler, with the permission of the Chairman I would like to interject a followup question. I understand it is premature to be able to really understand the nature of some sort of evolution that should be taking place as tribes assume more contracts and as the Bureau correspondingly and proportionately decreases as an entity. But related to that is the question of whether or not existing civil service regulations and laws may have already posed obstacles.

If you have a superintendent who was responsible for 19 different programs, let us say 10 of those programs are taken over by the tribe under the Public Law 93-638 contract, would not that necessarily redefine the job description of the superintendent? As a followup to that, let us assume that you have a tribe which contracts for virtually all of the programs on the agency level. What then is the responsibility of the BIA for that agency? Would that not redefine a job description in terms of the residual trust responsibility and the contract monitoring and evaluation function? Do you project a need down the road for mandatory language that would help clarify and give you more flexibility to define job descriptions? Could you respond along that line?

Mr. **Raymond Butler.** Yes; Mr. Parker. In my judgment, as we move into the implementation of Public Law 93-638, this will change. I will use specifically, for example, the Miccosukee contracting wherein the Miccosukee group has taken on the entire programmatical delivery of services onto themselves and in that instance we no longer have any staff actually there at all. The contract monitoring, and the technical assistance that is provided to the tribe, because it is such a small tribe, is performed out of the Eastern Area Office. Another example is the

Fairbanks agency in Alaska which, under authority of the Tanana Chiefs is taking on more and more of the local delivery systems services.

This, naturally, changes the complexities of, for example, a superintendent's job into one of more of monitoring, evaluating, and providing technical assistance. It also, Mr. Parker, changes the complexion of the programmatical staff that may remain. I can specifically recall, for example, the Eastern Band of Choctaw who have taken over almost entirely the social services program at that agency. Because of the size of the program at the agency, it was my professional judgment that ultimately, when the tribe fulfills their goal of taking over the entire program, then we will need but one BIA program staff person there whose job description will change from that of a direct delivery type approach to one of monitoring, evaluation, and serving technical assistance to the tribes as a contracting officer.

Mr. PARKER. Have you encountered any difficulties in terms of civil service regulations or laws that limit the flexibility in your job description for that position?

Mr. RAYMOND BUTLER. Very candidly, Mr. Parker, yes we have. They have decided the level of performance. In other words, the grade level is no longer there. They have suggested that we drop the grade level let us say from a 12 to a 9 because of the duties being changed. Whereas, in our judgment, the complexities of the changing situation do not necessarily result in that effect.

Mr. PARKER. Then, would you be able to define a need for mandatory language which would give you more flexibility?

Mr. RAYMOND BUTLER. I would defer to the other members of my staff, particularly Mr. Asbra who deals technically in this area. But I do not believe that we are ready to suggest specifically amendatory language but as we move into this area, for example, the Bureau now has a personnel management system that we are working on and which is a followup to some recent civil service evaluation audits that may ultimately result in some suggested amendatory language.

Is that a fair assessment, Mr. Asbra?

Mr. ASBRA. Yes.

Senator MELCHER. Mr. Commissioner, when you get an application for a contract from a tribe, am I to gather from your earlier answers that you really have no right under the act to refuse the application?

Mr. RAYMOND BUTLER. Basically, Senator, in our judgment if the proposal by the tribe is equitable, fair, and within the secretarial funding level, then it is a program which has been authorized by the Congress in our appropriarion act, and we have no basic right to decline that contract. The tribe has that option under the mandate of Public Law 93-638.

Senator MELCHER. I would gather then that if a tribe makes an application for a contract then if you find fault with it then you turn to the tribal authority and say, "You must modify the application"; is that it?

Mr. RAYMOND BUTLER. If there are problems with it, we feel that we are mandated to provide them with any technical assistance that they may need to bring that contract proposal into conformity.

Senator MELCHER. So, in effect, all acts of a tribal authority toward getting a contract are accepted; is that right?

Mr. **Raymond Butler.** If it reasonably provides a level of service to the people.

Senator **Melcher.** If you find it unreasonable, then you say it is unreasonable and they must modify it; is that right?

Mr. **Raymond Butler.** That is correct.

Senator **Melcher.** That is done?

Mr. **Raymond Butler.** Yes.

Senator **Melcher.** Are not some proposals better than others?

Mr. **Raymond Butler.** Yes, indeed.

Senator **Melcher.** Does not the act itself provide you any authority to weed through the proposals and accept the best proposals? Your funds are not unlimited.

Mr. **Raymond Butler.** Senator, we are dealing here basically with a single tribal proposal. It is our judgment that under the act, if there are any weaknesses noted in the proposal, our first obligation is to provide technical assistance to that particular tribe to try to upgrade their proposal so that it will provide the services of the level desired by their people.

Senator **Melcher.** You have had $127 million. I gather that is for this fiscal year; is that right?

Mr. **Raymond Butler.** Yes.

Senator **Melcher.** Contracts let for a fiscal year?

Mr. **Raymond Butler.** Under the authority of Public Law 93-638.

Senator **Melcher.** You have run out of money?

Mr. **Raymond Butler.** No; we have not run out.

Senator **Melcher.** You have more money?

Mr. **Raymond Butler.** In programmatical funds?

Senator **Melcher.** Under Public Law 93-638?

Mr. **Raymond Butler.** The $127 million that I referred to includes all of the programmatical funds which are appropriated to the Bureau.

Senator **Melcher.** If all of the contracts that have been worked through that were applied for, how much of them could be funded?

Mr. **Raymond Butler.** Ultimately, if all the tribes desired to perform their own local delivery system of services, we could fund all of those programs to the tribes with the one exception of the trust obligation which the United States holds on behalf of the land and natural resources.

Senator **Melcher.** So, if a school on a reservation had a proposal properly accepted by the tribal authorities for a contract, then that school would get a contract; is that right?

Mr. **Raymond Butler.** Yes.

Senator **Melcher.** There is no limitation in the funding; is that right?

Mr. **Raymond Butler.** Oh, yes. The secretarial funding level for that school is there.

Senator **Melcher.** I understand that. But to the extent that your authority is over that school, that school could expect under the proper arrangement or the proper proposal that they would have a contract; is that right?

Mr. **Raymond Butler.** Yes, sir.

Senator **Melcher.** Then the question is this. There are the more deserving contracts which are the ones that are well-prepared. It would only be on that basis and not on the basis of preparation. All deserving proposals would result in a contract. I use schools as an example only.

Mr. Raymond Butler. Senator, the answer is yes. But, you see, they are not necessarily in competition.

Senator Melcher. I understand. The act basically does not pit one proposal against the other. This competition is not even within the same tribe; is that right?

Mr. Raymond Butler. That is correct.

Senator Melcher. What process of checking on the actual delivery of the services—whether it is education or social services or natural resources or what have you—on seeing whether or not the contract is actually beneficial and an improvement over the past track record has been instigated by the Bureau?

Mr. Raymond Butler. Let me ask LaFollette Butler to respond to that. 1. There is a contracting officer's representative. In the instance of the schools there would be an education specialist who would be designated as the specific contracting officer's representative to monitor that particular school contract.

2. Under the act there is a specific requirement that they must report to the Secretary. An accounting of the expenditures of those funds and the program accomplishments is a requirement of the act.

LaFollette, would you care to speak further on that?

Mr. LaFollette Butler. Senator, the difficulty that we have is that the contract proposal is often a great deal different than the operation that the Bureau has. We have deliberately built that into the regulations to allow for the tribe to determine how they think the program ought to run.

So, the standards and criteria for the program operation are really the tribes. Whether or not the results will be better than an operation by the Bureau under its standards and criteria is a matter of judgment that is very difficult to arrive at.

So, what the contracting officer's representative is doing is seeing whether or not the terms of the contract are being complied with. That is: Are the particular tribe's standards and criteria being attained? Rather than comparing the standards and criteria to something that existed when the BIA was operating the program then that would be the comparison.

Senator Melcher. Just for my edification, if a school is a school district within the boundaries of the reservation and is a school district that is subject—and I presume all schools within the boundaries of a reservation within a State are subject to whatever State standards are applied—is that true?

Mr. Raymond Butler. Yes.

Senator Melcher. If it is a school district within the boundaries of a reservation and if the school is not entirely in that area—if you have non-Indian children attending the school within that district—is that subject to a contract? That is outside of the scope; is that right?

Mr. Raymond Butler. Are you referring to a public school district?

Senator Melcher. Yes.

Mr. Raymond Butler. That is a part of title II of the act in which the applicable portion relates and is prorated on the basis of Indian students versus the non-Indian students. It is generally referred to as a Johnson-O'Malley rather than a 638.

Senator Melcher. They would not be subject to a contract?

Mr. LaFollette Butler. The total operation of the public school would not be subject to a contract.

Senator Melcher. With the Johnson-O'Malley portion?

Mr. LaFollette Butler. It could be contracted by the tribe or the Johnson-O'Malley contract could be with the school district. That is at the option of the tribe.

Senator Melcher. That is at the option of the tribe?

Mr. LaFollette Butler. Right.

Senator Melcher. So, even those instances of a public school on the reservation, a portion of it could be contracted; is that right?

Mr. LaFollette. Yes; under the Johnson-O'Malley program.

Senator Melcher. Then the tribes responsibility would be more direct; would it not?

Mr. LaFollette Butler. Yes.

Senator Melcher. That is the purpose of 638?

Mr. LaFollette Butler. That is correct.

Senator Melcher. When we coordinate that, the purposes of law and order seem to be a small portion of the $127 million which is under contract. That leaves only about $4.6 million which is for law enforcement. But would the contract be reviewed in order to see whether 638 really works? Would a review of the law and order, in relationship to the other contracts for a school or social services, be reviewed as an integrated part of the contracting procedure with that particular tribe on that particular reservation?

Mr. Butler. Senator, yes, they would be. In terms of their interrelated elements they would be. This would deal with the effectiveness of the administration of the individual contracts be it a law enforcement contract, a social services contract, or a school contract. I am talking about the interrelated parts.

Senator Melcher. May I draw your attention to this? While the purpose of Public Law 93–638 is, and the meritorious goals that it presents cannot be denied, that the successful carrying out of an educational program can also rely on the successful carrying out of law-and-order procedures on a reservation. We are finding that some of the school districts within the reservation are having great difficulty in maintaining the quality of the teaching staff. We are finding some examples of vandalism being so great and so uncontrolled with regard to some schools—and I am glad to say that a small minority of schools is what is brought out—that the quality of education for those particular schools is increasingly in doubt. There is a rapid turnover of teachers. There is almost a constant turnover of a faculty in the public school which does not lend itself to carrying out the mission that we have of good education for all school children—Indian or non-Indian.

Now, without a lack of coordination on these contracts to make sure that they are successful is what we have. The basic one of education may falter simply because of vandalism, truancy, and the likelihood of no school at all or no effective school at all.

I make these points now as constructive criticism of what is happening. I am glad to say that this is a minority of instances with regard to the public schools on reservations.

But it is of great concern to me that there be an effective review of the contract procedure to make sure that they are successful and that they do work together. It does us little good to have Johnson-O'Malley funds available and find out that we do not have the teachers or we cannot fill the staffs with acceptable teachers. Then we find that we are having low-grade education in our public schools on Indian reservations. There is a basic reason. Law and order has not been attained. Tribal responsibility is interwoven with the responsibility of town officials and county officials and falters. If it is not working we do not have the right atmosphere for educational procedures. I am trying to make these as constructive points. This is not necessarily made to be derogatory at all.

Mr. **Raymond Butler.** Senator, I appreciate that. As a social worker, I can appreciate the interrelatedness of this, not only with respect to law enforcement and vandalism and so on and the truancy which needs to be coordinated but also the social services in many instances that need to be provided to afford those kids the education which they deserve.

Senator **Melcher.** I have one final question. President Carter has called attention to the fact that many Federal agencies are contracting out their work. Some of this is because of ceilings imposed on personnel. When that type of out-of-the-house contracting is more economical and more efficient than in-house people doing the same work, then it makes a lot of sense.

But, nevertheless, all Federal agencies have to be able to justify these contracts that are outside their own people in order to accomplish what their own people would be doing if the personnel ceilings were available.

What is this Sterling contract and how much is involved in it?

Mr. **Raymond Butler.** Senator, let me ask Mr. Krenzke to respond to that. It is within his office on the Sterling contract.

Mr. **Krenzke.** I am not aware that we have one here in the Washington office with Sterling Institute at the present time.

Senator **Melcher.** Who is Sterling Institute?

Mr. **Krenzke.** It is a private firm that provides consultation and training, to my knowledge, to a number of Federal agencies.

Senator **Melcher.** Where are they located?

Mr. **Krenzke.** To my knowledge they are located in the Washington, D.C. area.

Initially we had a small contract with Sterling Institute going back approximately 1 year ago for the purposes of assisting us in finalizing our guidelines for the administration of a grant program. However, that contract was of short duration. I think it was about 60 days or thereabouts and has not been repeated since that time directly.

However, Sterling Institute has, on its own, conducted training seminars in relation to Public Law 93–638 at a number of locations throughout the country. These have been fairly comprehensive training seminars. We have had employees of the Bureau of Indian Affairs attend some of these seminars. We have paid their tuition for them to attend these seminars. Also some of our training and technical assistance funds that have gone out to the tribes have been used to attend the seminars relating to Public Law 93-638 which have been conducted by the Sterling Institute at a number of locations.

Senator Melcher. First of all: What was your initial contracting in terms of dollars?

Mr. Krenzke. $6,750. But I think maybe we had two of them. It was less than $20,000 total.

Senator Melcher. Less than $20,000?

Mr. Krenzke. Yes; to the best of my recollection.

Senator Melcher. I gather that this was a different type of arrangement. But how many employees has the Bureau paid the tuition for and what does it amount to in terms of dollars?

Mr. Krenzke. I do not have that figure at hand. We could get that information for you. We have had quite a substantial number. I would say 200 or 300 have attended the seminars.

Senator Melcher. Where the Bureau has paid the tuition?

Mr. Krenzke. Yes.

We have endeavored to try to have a massive orientation to the greatest degree possible of all of the responsible employees in the Bureau of Indian Affairs relative to Public Law 93-638. We feel it is a basic thing, as far as the Bureau operations is concerned, so that all of our staffs in the responsible positions clearly understand the act, the philosophy behind it, the regulations, and the like.

Senator Melcher. Do you suppose that Sterling Institute has a better understanding of that philosophy than the Bureau does itself?

Mr. Krenzke. This probably goes back to your initial comments that we simply have not had the staff on hand to be able to do the kind of job that we should do. This is the reason for contracting. It is not really a contract but we are using this other method rather than inhouse.

Senator Melcher. In other words—a personnel ceiling?

Mr. Krenzke. This is it in part but the other thing, of course, is the matter of trying to get a new program cranked up. Initially we had a few positions established in the central office to provide direction, particularly in relation to the grants, the training and technical assistance, and the like. About the time you get the positions established and get the new people on board and train them, then it is a time-consuming process. We are doing it with people on detail and this kind of thing in part, but we could not handle it. In accord with how we felt our responsibilities to be—both to our staff and to the tribes—to get this information out, we went that way.

Senator Melcher. In the 8 years that I have been here I have thought that every agency which answers to the particular subcommittee, either House or Senate, on the appropriations presents rather detailed facts on how they are spending their money. In more recent years we have taken on the responsibility of oversight in the authorizing committees, which I very much applaud. Both in the House and the Senate it now makes each individual Member more conscious of how the responsibility of carrying out the acts of Congress are met by the various agencies. It has also caused each Member of both the House and the Senate through these oversight procedures to try to evaluate and try to make a judgment on cost effectiveness.

To my way of thinking, it is certainly appropriate that President Carter has now said that personnel ceilings are being set aside on the basis of out-of-house contracts and that that is a dubious way of saving money. If, in the judgment of the Bureau, the money is better spent in this type of operation through such an institute as the Sterling Institute, then that is fine. If that can be ascertained on facts then that is fine.

You have enough experience now during the past year to ascertain whether or not this is really an effective way of utilizing the limited dollars that are available for funding the programs that you have a responsibility for carrying out. I would appreciate it if you would work up for the committee your best judgment on whether or not this is more efficient and more effective.

If it is not, then we would like to know about it. That is the purpose of our oversight.

Mr. **Raymond Butler.** Senator, we would be pleased to do that. Let me comment empirically that in my judgment at the time specific to the Sterling program, when we initially began operation of Public Law 93–638, we did not have the staff and technical expertise to perform that type of massive training and orientation effort. We did look to Sterling at that time.

As we move along, and in the staffing of our own programs, and as the tribes review their own needs for training and technical assistance, then this will be reduced I think.

Mr. **Krenzke.** If I may add to that, I have a specific point. One of our concerns was a broad orientation of all of the key Bureau staff relative to Public Law 93–638. I think overall the comments from both our staff and the tribal representatives that these were generally complimentary toward Sterling Institute. However, at the present time we are going into a rather large similar type program which will be addressed to Bureau superintendents and Bureau program personnel and contracting officers which essentially addresses the problem of how does the Bureau of Indian Affairs continue to carry on its program responsibilities through the contracting process. We are doing it in-house.

Senator **Melcher.** That will be in-house?

Mr. **Krenzke.** Yes.

Senator **Melcher.** In other words, Sterling may use their expertise for the tribes more and more in the future and less and less with the Bureau; is that right?

Mr. **Krenzke.** I don't know what Sterling plans are in that respect.

Senator **Melcher.** You don't know what the tribes plans are either?

Mr. **Krenzke.** No. [Laughter.]

Senator **Melcher.** But it does give that option; doesn't it?

Mr. **Krenzke.** Yes. I do know that we have staff on board which we did not have at that time that the regulations were finalized.

Senator **Melcher.** I would appreciate you sending it.

Am I to gather that part of this $127 million would be for the tribes to utilize the services of Sterling?

Mr. **Raymond Butler.** No, Senator, those are entirely program administration funds.

Training and technical assistance funding would be that which the tribes would have the option to use for securing expertise such as Sterling or other accounting firms.

Senator **Melcher**. That would be outside of the $127 million?

Mr. **Raymond**. **Butler**. Yes.

Senator **Melcher**. But it would nevertheless be Federal funds?

Mr. **Raymond Butler**. Part of the Bureau's budget, yes, in terms of supplying technical assistance.

Chairman **Abourezk**. We have other questions, but we will have to submit those because we have run out of time.

But I want to make one request, Mr. Butler, before we conclude this particular part of the hearing. We have made our intentions of inquiring into Public Law 93–638 implementation very clear with a notice to you and your interrogatories that we sent and so on. We are quite a bit disappointed in the fact that you came prepared with nothing insofar as answers were concerned or figures or percentages and so on. I have been around here long enough to know when I am being stone-walled.

I have been around here long enough to know that you could have brought those with you had you wanted to. I want to make a request of you that in the future when we have hearings of this nature that you have with you the information that you can anticipate will be needed. If you have questions ahead of time, all you need to do is contact the staff and let them know.

But it is not pleasant for us to have to continue to try to force answers out of you and wait 2 weeks for an answer. It is less pleasant when there are times when tempers get short. They have not today at all, but they could at some future time.

So I would appreciate it very much. I know that you will appreciate that future hearings will go a lot smoother in this regard.

Mr. **Raymond Butler**. Mr. Chairman, it is a much easier job on this side of the table also if you have those answers. It makes it easier. I apologize to the chairman for that.

Chairman **Abourezk**. We do not need an apology. We just need the answers.

So, I want to thank you for appearing today.

[Subsequent to the hearing, the following material was supplied by the Department of the Interior:]

Questions by the Senate Select Committee on
Indian Affairs on P.L. 93-638, Letters of
May 26 and June 1, 1977

1. How many contracts under 93-638 has the Department entered into with various Indian groups or tribes?

   Through the first half of the fiscal year, March 31, the Bureau entered into 638 contracts under the Act.

2. What were these contracts for?

   The contracts involved a wide range of Bureau programs, e.g., Education, Social Services, Employment Assistance, Law and Order, Housing, Natural Resources, Forestry, etc.

3. How much money were these contracts for?

   The total dollar value of all contracts was approximately $126,620,000. Of this amount Education accounted for $41,040,000; Social Services $34,389,000; Employment Assistance $3,622,000; Law and Order $4,639,000; Housing $2,284,000; Natural Resources $3,525,000 and Forestry $1,502,000. In addition, Indian Action Team Program contracts totaled approximately $19,500,000.

4. - 5. Have any contract applications been denied? For what reason were they denied?

   There have been no declinations to contract under the criteria found in the Act. These are: (1) Services to be provided would not be satisfactory; (2) Adequate protection of trust resources was not assured; (3) The proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract. There have been some contract proposals that have not been consumated for other reasons. These are principally cases where the proposal was for a program that was not contractible under the regulations, cases where the funds in the proposal exceeded the amount available as the Secretarial funding level and cases where, in multiple tribe agency situations, one or more of the tribes served by the program did not agree to the contract proposal and funding arrangements for the proposal and residual Bureau operations could not be made. Also, we had some cases where the fiscal year ended before the funds could be obligated i.e., while the application was in process and the contract (the obligation document) had not been signed.

6. How much money was retained by the agencies for the administration of 93-638 contracting?

   The Act requires that the amount of funds available for the contracted program shall be not less than the amount the Secretary would have made available if he had operated the program himself. The determination of this level of funding (Secretarial Funding Level) is in many cases complex, particularly in a multiple tribe agency situation.

Our guidelines (Chapter 5) give detailed treatment as to how the SIL should be ascertained. The major steps in the process are:

(1) Describe the program as operated by the Bureau.
(2) Redescribe the Tribe's proposal in terms of comparability to (1) above
(3) Describe the residual Bureau operation (if any)
(4) Determine the funds available for the proposal ((a) minus (b))
(5) Compare the funds available with the tribes proposal
(6) Explore alternatives (if (a) is less than (b)).

We do not have statistics on the dollar amounts.

7. How much administrative costs monies were given to the contractor for contract support above the basic contracting amount?

Indirect cost rates are determined by audits by the Department's Audit and Investigation Office. These rates range from less than 1% to over 60%. They are paid out of funds appropriated for contract support. The contract support money is also appropriated for the costs of the audit and for additional costs of contracting (which formerly were paid out of program funds) such as the costs associated with displacement of personnel. In 1976, including the T.Q., the amount of contract support funds available was 12.0 M. In 1977 the amount available is 9.7 M. Many more contracts are being let and many tribes who had contracts which began prior to 638 are establishing indirect cost rates which is increasing the demand tremendously for contract support funds. Our present estimate based on $150.0 million in contract is a minimum of $15.0 million.

8. What arrangements are made for advance payments to contractors?

Advance payments are made by treasury check to the contractor or the contractor's bank as through the use of a letter-of-credit.

9. How many requests have been made for advance payments, and how much money was requested out of the total cost of the contract?
10. How many were turned down and for what reasons?
11. How many were subsequently awarded?

The information is not available at this time. However, we are not aware of any instances where an advance payment has been denied.

12. What is the policy of the agencies when a contract request is received at or near the end of the fiscal year?

We try to process the application but if we are unable to have the application processed in time, the money is no longer available. "The amount the Secretary would have otherwise provided . . ." is zero. Hence, there is no contract. This is not a declination under the criteria set out in the Act. We are exploring the possibility of seeking appropriation act language that would allow for carryover of such funds where the fiscal year ends during the time allowed for contract application processing.

13. What are the appeal procedures if a contract is denied?

There are two circumstances wherein the Commissioner's Office may become involved in the application review process, i.e., when recommendations to decline are submitted by an Area Director or when an application is sent directly to him under §271.21(a)(3) because the application proposes to provide services to tribes or Indians through operations physically located within the jurisdiction of more than one Area Office.

If the Commissioner accepts the Area Director's recommendation to decline, upon receipt of such notice from the Commissioner, the tribal organization has three alternatives: (1) it can do nothing; (2) it can appeal the Commissioner's decision to the Office of Hearings and Appeals, Department of the Interior, Washington, D.C.; or (3) it can accept the technical assistance offered by the Commissioner in his notice with the objective of submitting a revised application at a later time.

14. & 15. Are they the same for denial due to lack of funds? If not, how do they differ? What are the time restrictions in the appeal process from a denial for lack of funds.

§271.82 provides for appeals on other than declination action. The procedures governing appeals are regulated by 25 CFR 2. §271.83(b) provides the decision of the Commissioner regarding funding levels to be final.

16. How much was the pre-contract technical assistance budget in FY 1975 - 1976, FY 1976 - 1977 and FY 1977 - 1978?

The Bureau's total budget for training and technical assistance was $1,100,000 in FY 1976 and Transitional Quarter; $4,463,000 in FY 1977; and tentatively $5,463,000 in FY 1978.

These amounts include, as indicated, both training and technical assistance. No specific amount has been directed toward pre-contract technical assistance--although, as indicated in attached memorandum of January 28, 1977, field staff have been directed to give the highest priority to use of the funds to those obligations for training and technical assistance detailed in the Act itself and the regulations--which includes pre-contract assistance, as well as other needed help specifically in relation to the contract and grant process.

17. How much was spent of those monies appropriated for that purpose?

As indicated, we do not have a breakdown relating to precise costs of pre-contract assistance vis-a-vis the total training and technical assistance program. In FY 1976, the heaviest emphasis was placed on training of an orientation nature relating to the Act, the regulations, and especially also the new grant program. In FY 1977, much of this emphasis has continued, with a broadening into a variety of technical assistance efforts which reflect the desires of the tribes in any particular part of the country. In FY 1976, the funds did not become available until late in the year (June) and our finance records show only about two-thirds of the total amount was obligated. However, some funds from other programs were used for technical assistance earlier in the fiscal year and cost adjustments have not yet been finalized. In FY 1977, we have already obligated about 75% of the funds. In FY 1978, the additional $1,000,000 is designated for tribal use in evaluating Bureau programs.

18. How much went to non-Indian businesses for providing technical assistance?

For FY 1976 and Transitional Quarter, approximately $240,000 is indicated as going to non-Indian businesses. The tentative figure for FY 1977 is approximately $475,000.

In Fiscal Year 1977, about $150,000 of this amount has gone to the Association of American Indian Affairs for legal services. A substantial amount in both fiscal years has gone to Sterling Institute to pay for individual tuition/attendance costs for Sterling prepared seminars on P.L. 93-638.

19. What have the T&TA monies been spent on?

Basically, T&TA funds have been spent on orientation and training of BIA staff and tribal personnel in the requirements and procedures of P.L. 93-638; in providing various kinds of technical assistance to the various tribes; and in paying the Bureau staff which is intimately concerned with implementing P.L. 93-638. Thus, in FY '77 out of a total budget of $4,463,000, approximately $1,068,000 was allocated to staff expenses, the balance is allocated to training and technical assistance.

Some examples of the areas in which tribes have received training and technical assistance:

Training	Technical Assistance
Orientation in P.L. 93-638	Grants/Contract Application Prep.
Grants/Contracts Admin.	Proposed Preparation
Personnel Systems	Updating Tribal Census

Training

Program Management
Training in BIA Program
Communications Seminar
Tribal Managers Seminar
Program and Management Planning
Personnel (IPA) Options
Land Research
Tribal Enrollment Procedures
Tribal Government

Technical Assistance

Resources Survey
Planning Agricultural Develop.
Financial Management
Accounting
Management Planning
Improvement of School Facilities
(to overcome a declination problem)
Grants/Contracts Administration
and Monitoring
Personnel Options
Tribal Management Planning
Developing Indirect Costs
Audit Procedures
Judicial System
Fishing Area Enforcement
Tribal Enrollment Procedures
Legal Assistance

20. & 21. How much consultation with the Indian tribes was made regarding their views on how the technical assistance monies should be spent? How was tribal input obtained?

We believe that a strong, sincere effort has been made throughout Indian country to be sure that the tribes have been involved in the T&TA process.

Initially, in November of 1975, a meeting was held to discuss the course of the T&TA program with representatives of more than 20 tribes in attendance. Based on this meeting, it was determined to get the bulk of the funds out to the field where it would be available on a flexible basis to respond to needs of specific tribes. In distributing the funds, the Bureau has divided the funds among the areas based primarily on the number of tribes in the respective areas.

Recently, memoranda from the Commissioner to the Area Directors have strongly encouraged them to insure that the tribes be informed, not only of T&TA, but all phases of P.L. 93-638. In each area, the procedure has varied but an organized effort has been made everywhere to involve the tribes. In some, questionnaires have been sent to the tribes, soliciting their views. In others, meetings have been held by agency superintendents with tribal representatives. Area-wide seminars have been held in some areas. In all, the effort has been made to involve the tribes in determining T&TA distributions. Please note content of January 28, 1977 memorandum.

22. How much in §104 grant monies were distributed in FY 1975 - 1976, FY 1976 - 1977, and FY 1977 - 1978?

FY 1976	$7.8 million (includes TQ)
FY 1977	$16.5 million
FY 1978	$17.5 requested

23. What were these grants for?

We have established five general categories of grant uses, which are:

1.	Strengthening tribal government	260 grants
2.	Improving tribe's capacity to contract	75 grants
3.	Land acquisition in support of 1,2	13 grants
4.	Planning grant	4 grants
5.	Matching shares (if required by other Federal grant programs)	2 grants

(Adds to more than total number of grants because of several multi-purpose grants.)

24. Were any grant requests turned down? If so, why?

Several grant requests have been turned down because they were submitted by non-eligible entities. Although we do not have a count of grants denied to eligible entities, only one appeal has been submitted to the Commissioner (Tlingit-Haida). Our feeling is that denials of grants to eligible entities were based primarily on determinations that the purpose of g-ant did not fall within the intent of the Act.

25. What are each area's policies and procedures toward matching share grants with other agencies?

Central Office directions allow use of 638 grants for matching share grants with other Federal agencies as long as the purpose of grant falls within the intent of the Act. Procedures are same for matching as for individual grants.

26. What is the policy in personnel transfers under I.P.A. and 93-638?

IPA agreements are three-party agreements between the Bureau, the employee and the recipient entity (tribe or tribal organization). Tribal organizations may utilize IPA Agreements without obtaining authority from each tribe to be served by the contract. IPA is the temporary detail or assignment of a federal employee to a tribal organization. The person remains a federal employee. If the tribal organization agrees to pay one-half of his salary, he is now counted in our employment ceiling. Since the local line managers are responsible for performing the residiual Bureau operation with the funds and employment ceilings available to them we have given them the authority to negotiate and approve IPA assignments.

27. What kinds of arrangements are made to hold the positions open within the agencies after an I.P.A. transfer has been awarded?

In an IPA assignment the BIA position of the assigned employee remains encumbered. If the tribal organization pays one-half or more of the salary, the employee is not counted against our employment ceiling. However, since replacement for the employee can only be on a temporary basis, it is not always possible to obtain employees to perform his duties while he is on this assignment. This and the funds available for replacement is certainly a consideration in the process.

28. How many requests for I.P.A. personnel transfers were made by tribes in FY 1975-1977 and FY 1977-1978?

This is a figure we do not have.

29. How many personnel were transferred under those requests?

Since the amendment to the IPA to recognize tribes and tribal governing bodies to participate in the program, the Bureau has approved 32 assignments to tribes.

30. Were any I.P.A. requests turned down? If so, why?

There have been two cases that have come to our attention wherein the BIA refused IPA assignments requested by tribes.

31. How much assistance is given to the tribes with the lengthy application forms, pre-application technical assistance and contract application process?

A close examination of the application procedure will clearly show that the application process is significantly simplified in comparison to other grant programs. However, the BVIA is prepared to provide technical assistance which the tribe feels is necessary in completing the process.

32. What is the relationship between the Central Office and the Area Offices in regard to implementation of 93-638?

Line authority is vested in Area Offices; therefore, while the Central Office establishes rules, regulations, policies, guidelines, and other direction, it is the responsibility of the Area Offices to implement 93-638 within those directions. All grant money is allocated to the Area Offices, and they have full authority to enter into grant agreements with tribes.

33. To what extent do the Area Directors control or influence contracts and grants?

Under P.L. 93-638, emphasis is on tribal self-determination in respect to both contracts and grants. Area Directors are required to administer these programs consistent with the spirit of both the law and the regulations pertaining thereto. Area Directors have final approval authority on grant applications and are responsible for seeing that adequate technical assistance is available to the tribes in all phases of the process. They also are charged with seeing that adequate monitoring and evaluation take place.

As to contracts, the Area Director has authority to approve but can only recommend declination of a contract to the Commissioner. When a contract is awarded and signed, the Area Director, through the Contracting Officer and the Contracting Officer's representative, has the responsibility for contracting compliance.

34. To what extent do the superintendents control or influence contracts and grants?

At the grass roots level, the Superintendents have the foremost responsibility for fully acquainting tribes with the opportunities and options afforded them under P.L. 93-638. The Superintendent has responsibility for giving assistance to tribes in the pre-application and application process. He also must review the application and submit a recommendation to the Area Director as to approval or disapproval. He shares with the Area Director and the CO and COR the responsibility for administration of contracts and grants.

35. To what extent does the Central Office control contracts and grants?

The Central Office develops overall policy, rules, regulations and guidelines regarding 638 implementation. Central Office has no day-to-day control over any contract or grant. That responsibility is assigned to the areas and agencies. Any semblance of control would be in the area of grant uses which Central Office must delineate. As to contracts, the Commissioner has the authority to decline.

36. What mechanisms are set up for monitoring of contracts and grants?

Most grants are on a cost-reimbursable basis. A financial report is required on a regular basis, as is a progress report. The goal or purpose of the grant is spelled out in detail in the grant agreement, along with reporting requirements. Progress is measured both by the tribe and the BIA representative designated GOR (Grants Officer Representative) for the grant. Most of the grants are for improvement of tribal government, and results in many cases will be measurable only over a long time period.

As to contracts, the COR has direct responsibility for monitoring. We are developing a system for evaluating the contracting process; we will have a group in the field next week for this purpose.

37. What is the policy of the Department when a request for contract is received for a service which is not provided by the Department, but is a legitimate function of the tribal government?

When there is a question whether a program is actually "authorized," the Bureau must determine if the program falls within the scope of the provisions of the Snyder Act or a subsequent Act. With few exceptions, this would permit a tribal organization to contract to operate any program for the economic and social benefit of Indian people so long as the proposed program can fit within the budget structure of the current Appropriations Act.

38. What is the Department's policy in regard to contracting for trust services?

The policy is set out in the regulations at 25 CFR 271, Subpart C. In essence, it is that we will not contract for the trust responsibility itself. That is, the descretion and judgement regarding trust resources must continue to be exercised by the principal agent of the United States. However, resource projects and staff work leading up to the exercise of the discretion and judgement can be contractual with certain safeguards.

In given situations, it is extremely difficult to draw the line. We would certainly welcome suggestions to strengthen this part of our regulations.

39. Are there any apparent conflicts of interest in tribes contracting for trust services? If so, what are they, and why are they considered conflicts of interest?

Where the contracted services cover allotted land and tribal land, the tribe as contractor would have an opportunity to be biased in favor of the tribal land in detriment to the allotted land. 25 CFR

271.33(a)(2) represents an attempt to deal with this problem.

40. What is the Department's policy with regard to §7(b) of 93-638?

Shortly after enactment of P.L. 93-638, we contacted the Department of Labor regarding that Department being the lead agency for 7(b). After two letters and several phone conversations and visits, that

Department refused to agree to take the lead on the basis that its function was to assure equal employment opportunity and therefore it felt it should not take the lead in enforcing Indian preference in Federal contracts. The Department of Labor referred the matter to the Office of Federal Procurement Policy. We and our Department have been in contact with OFPP but have been unable to get that office to take appropriate action. This Committee may want to make inquiry.

The Department of the Interior's proposed procurement regulations which will implement §7(b) of P.L. 93-638 were sent to Tribal Leaders for review and comment on March 30, 1977. The comments from tribes are coming to the Department where they will be considered before publication as proposed rulemaking.

42. What are the BIA staffing arrangements for the implementation of 93-638 on the Central, Area and local level?

There are two staffing patterns for the BIA Central Office, each with 7 positions for a total of 14. The one function serves as staff support to the Commissioner. Their primary responsibility is to coordinate and monitor '638' law and regulations. Further, they function to help resolve declination issues, identify problem areas and assist in evaluation and reporting systems. The other function provides staff assistance to the Director of Indian Services in carrying out responsibilities for the coordination, support, and provisions of training and technical assistance.

Currently there are 33 '638' coordinators and staff positions at the 12 area offices. At this point, not all are filled as is the case in the Central Office. The staffing allocation is based upon number of tribes within the area's jurisdiction. The '638' staff is programmatic and responsible for supporting tribes with contracting, grants and the related training and technical assistance. The original staffing allotments did not include staffing at the agency level. Some areas have developed '638' coordinators at the agency and in other situations, the agency superintendent has designated a regular program staff person the added '638' responsibility.

43. What are the procedures used for a 3 year contract under 93-638 and are there any problems being encountered with them now, or in the forseeable future?

In general a three year contract would be handled in the following manner. The duration of the contract would be shown in the contract as three years from its effective date, i.e., October 1, 1977 through September 30, 1980. The contract amount would be the amount of funds available for the first year of the contract. Prior to the end of the first year of the contract the second year budget would be negotiated and the contract amended to reflect the second year funding. The same process would be followed for the third year.

No problems have been encountered, nor do we contemplate any. However, it should be noted that this is the first full year of operating under the three year authority conferred by the Act.

44. How are the §104 grants and technical assistance monies allocated between the area offices?

	FY 1976		FY 1977	
	Grants	TA	Grants	TA
Aberdeen	762.8	70.0	1,730.0	281.0
Albuquerque	581.3	70.0	1,351.5	283.0
Anadarko	331.5	70.0	812.5	286.0
Billings	556.1	60.0	1,056.9	260.0
Eastern	336.9	70.0	802.6	287.0
Juneau	2,190.0	100.0	3,590.2	385.0
Minneapolis	418.0	70.0	1,218.3	311.0
Muskogee	575.2	70.0	1,324.0	286.0
Navajo	418.2	50.0	593.0	212.0
Phoenix	750.0	90.0	1,920.4	305.0
Portland	500.3	80.0	1,222.4	206.0
Sacramento	361.6	100.0	876.7	352.0
Central Office		200.0		909.0

45. What monitoring and evaluation activities does the Central Office exercise over 93-638 implementation?

Following completion of the transition quarter, Central Office grants staff reviewed and evaluated applications and award agreements on a sampling basis. Based on the findings a training session was developed for each area, involving 360 field staff. A compliance review program is being developed to annually review the administration of each awarding field office. Training will be provided on an individual basis as needed. A Bureau Policy Manual system of guidance is being planned for grants.

As to contracts, the revised Guidelines were published in April. Numerous training sessions have been held and as was mentioned, we are developing a system for evaluation of the contracting process.

46. Are there any efforts being made to coordinate implementation of 93-638 with other agencies that have programs that tribal governments can benefit from? For example, Federal Domestic Assistance Programs to state and local governments.

The question of whether P.L. 93-638 contracts can be included in Joint Funding Simplification Act projects is being explored.

The JFSA regulations for all practical purposes address "grants" rather than "contracts" and even though certain contracts for federal financial assistance are mentioned, it is apparent that such contracts are for all intent and purposes "grants." Since P.L. 93-638 contracts are "contracts," primarily for services, and not "grants" the applicability of the JFSA regulations to such contracts is open to question. However, the Bureau believes that the Joint Funding process should be explored as it does have the potential to assist tribes to improve their financial and management capabilities.

With this in mind, the Bureau's Phoenix Area Office is working with the tribe and the San Francisco Federal Regional Council to identify whether the Salt River project lends itself to the Joint Funding process. This project was selected because the tribe has worked with the FRC for several years and has the only project of which we are aware that is this advanced in its development.

47. Are there any problems being encountered with the 93-638 regulations in relationship with other agency regulations or federal laws; i.e., Indian preference and Civil Rights Act of 1964?

If we understand the question, to date, we have not identified problem areas.

48. What is the length of time for reimbursement after a tribe has submitted the necessary documentation for contract expenses?

The process for reimbursement to tribes entails review at each agency, area and at Albuquerque; Certificate for payment from Albuquerque to the Regional Disbursing Office and disbursement to the Tribe by the Regional Disbursing Office. We are taking steps to eliminate the Albuquerque review which will prermit certification from the Area to the RD. The use of the Letter of Credit method obviates this procedure and allows the tribe to draw on the Letter of Credit in accord with prior arrangements between the tribe, Regional Disbursing Office and a local bank.

49. How many and what kinds of contracts have been entered into under the Buy Indian Act of 1910 (36 Stat. 861) or any other non 93-638 contract authority?

Through March 31, Bureau procurement totaled approximately $255,000,000. Of this amount, approximately $129,000,000 was procured under other than the Act. Of this, approximately $19,000,000 was procured under the Buy Indian Act. The types of things procured ranged from heavy equipment to commodities. We do not, however, have a breakdown available for the various items purchased.

50. What census date is used to determine the population base for §104 monies? Is the census data updated to assure accuracy?

There is a requirement that all Federal agencies with programs utilizing population figures as a basis for funding must use these figures developed for revenue sharing (based on 1970 census). The BIA had adjusted many of these figures when tribes have presented verifiable data indicating a different population than listed. (146 adjustments have been made.)

51. Are the tribal members who live off the reservation but use reservation services considered in 93-638 contracts and grants?

A tribe's proposal may provide for services to be provided for members who live off the reservation. Grant funds are distributed according to a reservation population base; however, services under the grant could be extended to the tribe's off-reservation members.

52. How many contracts have been declined or turned down because they involve multitribal service populations? What were the problems encountered? How are the problems being dealt with?

One of the basic principles of the Act is that tribes must consent to a contract for programs to serve their members. Often a tribe that wants to contract cannot get the consent of all tribes. Where a tribe does not want to be included in a contract, a solution would be to break out the program funds as between those tribes that want to contract and those that don't. However, in most instances it is not possible to pay for administration of the contract and for the residual program operation by the Bureau. We have not considered a change in the law that would override the desire of a tribe to not be included in a contract. Regarding the insufficient funds for the contract and residual program operation by the Bureau we have in the past unsuccessfully considered a request for funds for added programmatic costs associated with contracting.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

JUN 22 1977

Senator James Abourezk
Chairman
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter of June 15, 1977, regarding the Indian Affairs Committee's oversight hearings on the implementation of P.L. 93-638.

1. How much money was retained by the agency for the administration of 93-638 contracting in Fiscal Years 1976 and 1977? Please categorize the areas these monies were retained from.

In Fiscal Year 1976 the funds for 93-638 were received late in the year and no common services charge was made against them.

In Fiscal Year 1977, monies from 93-638 were retained in the BIA as shown below:

	Tribes	BIA	Total
Self-Determination Grants	$15,840,000	$ 660,000	$16,500,000
Training & Technical Assistance	3,833,000	584,000*	4,417,000
Contract Support	9,270,000	430,000	9,700,000
Common Program Services	-0-	(1,274,000)	(1,274,000)
TOTAL	$28,943,000	$1,674,000	$30,617,000

* Of the $584,000 retained in Training & Technical Assistance, $400,000 is for 16 full-time permanent self-determination staff (as of May 31, 1977), with annual salaries of $367,000 (including 10% employee benefit costs), plus an estimated $25,000 for travel and supplies, giving a total of $392,000.

The $1,274,000 for Common Program Services is for such services as contracting, financial management, budgeting, personnel management, mail, and telephone.

The major administrative service provided is contracting. We estimate the cost of contracting services provided for 93-638 contracts to be about $840,000. The estimate is based on salaries of $1,373,000 (including 10% employee benefit costs) for contracting specialists, and others with the word "contracting" in their job title. Clerical support is estimated to be a grade 5 and a grade 4 at each Area Office ($260,000), plus $50,000 for travel. This gives a total of $1,683,000 for all contracting services. One-half of this is allocable to 93-638 contracts because they make up 50% of the total procurement ($126.6 million out of $255 million).

It should be noted, however, that the administrative costs addressed above relate exclusively to that of the contracting office per se and do not include a breakout of other administrative costs associated with P.L. 93-638 contracts which include, but are not limited to: 1) program technical assistance and monitoring, 2) processing of financial documents relating to the contracts (e.g., letters of credit, vouchers, and other payment documents), 3) audits to establish overhead cost rates, 4) budget support activity, 5) accounting costs, and 6) general executive supervision.

2. How many requests for advance payments for 93-638 contracts were declined? (Based on our follow-up meeting with your staff, I understand that, as a practical matter, all contracts involve advance payments or letter of credit. A brief explanation of this procedure would be helpful.)

No requests for advance payments were denied. Advance payments are made through issuance of a "treasury check" or by "letter-of-credit." Under the "treasury check" method a check is sent directly to the contractor or its bank, at the option of the contractor, for its estimated funding needs to operate until reimbursement for costs incurred under the contract can be received. After the advance has been made additional funds are provided on the basis of invoices submitted for actual work performed.

Under the "letter-of-credit" method the full amount of the contract is established in a letter-of-credit. The letter-of-credit is sent to the appropriate Regional Disbursing Office (RDO) of the U.S. Treasury. As the contractor requires funds it submits a request directly to the RDO and a check is issued by the RDO to the contractor's bank account. Using this method a contractor can request funds daily if they are needed, but should not request more than is actually needed.

A more complete discussion of the advance payment process is found in the "Procedural Guidelines on 25 CFR 271," April, 1977 revised edition, on pages 9-13 through 9-30.

3. For what purposes are 93-638 training and technical assistance funds expended?

Basically, T&TA funds have been spent on orientation and training of BIA staff and tribal personnel in the requirements and procedures of P.L. 93-638; in providing various kinds of technical assistance to the various tribes; and in paying the Bureau staff which is intimately concerned with implementing P.L. 93-638. Thus, in FY '77 out of a total budget of $4,463,000 approximately $1,068,000 was allocated to staff expenses, the balance is allocated to training and technical assistance.

Some examples of the areas in which tribes have received training and technical assistance are:

Training

Orientation in P.L. 93-638
Grants/Contracts Admin.
Personnel Systems
Program Management
Training in BIA Program
Communications Seminar
Tribal Managers Seminar
Program and Management Planning
Personnel (IPA) Options
Land Research
Tribal Enrollment Procedures
Tribal Government

Technical Assistance

Grants/Contract application Prep.
Proposal Preparation
Updating Tribal Census
Resources Survey
Planning Agricultural Develop.
Financial Management
Accounting
Management Planning
Improvement of School Facilities (to overcome a declination problem)
Grants/Contracts Administration and Monitoring
Personnel Options
Tribal Management Planning
Developing Indirect Costs
Audit Procedures
Judicial System
Fishing Area Enforcement
Tribal Enrollment Procedures
Legal Assistance

What procedures for tribal decision making are used in the awarding of training and technical assistance support contracts?

We believe that a strong, sincere effort has been made throughout Indian country to be sure that the tribes have been involved in the T&TA process.

Initially, in November of 1975, a meeting was held to discuss the course of the T&TA program with representatives of more than 20 tribes in attendance. Based on this meeting, it was determined to get the bulk of the funds out to the field where it would be available on a flexible basis to respond to needs of specific tribes. In distributing the funds, the Bureau has divided the funds among the areas based primarily on the number of tribes in the respective areas.

The attached memorandum from the Commissioner to the Area Directors, dated January 28, 1977, (Attachment 3a) provides specific direction for tribal involvement in planning the use of Training and Technical Assistance funds. We have also been in the process of undergoing an extensive nationwide survey in cooperation with the Indian Health Service and the Office of Native American Programs as to the needs and desires of the tribes in respect to training and particularly technical assistance.

4. Was the Phoenix Area technical assistance contract with the University of Arizona an unsolicited proposal?

The University of Arizona was asked to submit a proposal by the Phoenix Area Office.

Was the contract advertised?

The contract was not advertised.

Were the tribes in the Area consulted before the University of Arizona got the contract?

All tribes were advised by memorandum of the Area Office's plan to enter into this contract. There were no dissenting comments.

5. What were the "non-eligible entities" that were turned down for §104 grants in the answer to question #24?

Non-eligible entities turned down for §104 grants include: Three terminated tribes in Oklahoma; an inter-tribal policy board in Idaho; North Central Tribes of Oklahoma; several individuals seeking grants for land purchase, etc.

What grants were turned down to these "non-eligible" entities?

Purposes of requests from groups were generally for organizational improvement.

What were the reasons that eligible entities were turned down? (Please elaborate and identify specific reasons).

Requests from eligible entities turned down for these kinds of reasons: more money requested than available; land purchase larger than could be justified on a tribal government improvement basis; development of a construction office; establish a pig farm; establish an old age home; unallowable legal assistance.

It should be noted that almost all of the grants were subsequently let to the eligible tribes. It should also be noted that since the BIA assists in the development of grant applications where necessary, many potential denials are eliminated prior to actual submission of application.

6. If §104 grants are included within the waiver authority of the Secretary found in §106, could Indian groups utilize §104 grants with more flexibility?

In general, we do not feel that inclusion of grants in the §106 waiver authority would increase flexibility of grant utilization.

How many grant requests were turned down?

As indicated, several grant requests were turned down to "non-eligible" entities. In reality, virtually none of the "eligible" grantees were turned down since their applications were modified if problems were noted.

7. What is the BIA policy regarding personnel transfers under the IPA pursuant to P.L. 93-638? E.g., what positions can be transferred and, if any positions cannot, why? Does the Bureau have set guidelines on who or who cannot be transferred? What were the exact reasons the two transfer requests in answer #30 were turned down? What is meant by a "conflict of interest" in such a transfer?

   The Bureau policy is to cooperate with tribal governing bodies and approve requests for IPA assignments when it is within the constraints of good management to do so. Each assignment must be for purposes which would be of mutual benefit to the Bureau and to the requesting organization. A specific question was asked regarding transferring a position. Positions are not transferred when an employee is on an IPA assignment. An employee on an IPA assignment is either on a detail or is on lwop and temporarily appointed to the requesting organization and never loses his identity as being a Federal employee. We have issued specific instructions in 44 BIAM 334 concerning IPA assignments. Also 44 BIAM 990.2.1 speaks to the policy of IPA assignments. (See attachments 7a and 7b)

   Attached is a copy of a May 4 memorandum setting forth the policy that it would be inappropriate to approve IPA assignments for employees in key positions in the Bureau. (Attachment 7c) One request for assignment which was denied involved a request for an Agency Superintendent to go on an IPA assignment to a tribe. His services were needed in the Bureau to continue the delivery of the remaining services provided to other tribes. Also, he was in a key position, and the appearance of conflict would be created if the Bureau official responsible for the contract remained an employee of the Bureau and served as an officer, or in a key position with the specific tribal group in which the contract was negotiated. The second case which was denied was due to lack of funds for a replacement. The tribe requested that the Bureau IPA an employee and continue to pay full salary and benefits. There was no money or ceiling available for a replacement.

8. When an IPA transfer is made to a tribe, is that position (or positions) charged against the BIA's personnel ceiling? Would you recommend any changes in existing regulations on this question to facilitate the use of IPA personnel?

   When an individual goes on an IPA assignment the salary may be paid in full by the Bureau, the tribe, or an agreement may be reached and each pay a share of the salary. In cases where the tribe pays more than 50 per cent of the salary the employee will no longer count against the Bureau ceiling. The question of money for a replacement becomes an important issue when you consider assigning an employee to an organization on an IPA assignment. In the majority of assignments so far, the Bureau has assumed a major portion of the employee's salary. The questions of ceiling and funds become important considerations in agreeing to release employees for such assignments. We would not recommend any changes in existing regulations at this time.

The Civil Service Commission Regulations state the 50 per cent ratio for not counting employees against our ceiling. We have informally discussed this problem with the Civil Service Commission and they are willing to raise the question again with the Office of Management and Budget to not count employees on IPA assignments against our ceiling.

9. After a tribe has contracted a significant percentage of programs at any given agency, we understand that difficulties have been encountered in redefining the Civil Service Commission's job description for the residual trust role of the BIA personnel remaining. Could you identify any specific instances where this has presented real difficulties and suggest to the Committee what changes in Civil Service Commission regulations or waiver authority may be necessary?

So far, we are not aware of any significant difficulties with respect to the residual trust role of remaining Bureau of Indian Affairs personnel. Positions are being redescribed to reflect residual responsibilities for programs and trust responsibilities. Changes in the grade level of positions depend on what responsibilities remain after contracting.

We are presently working on classification guidelines concerning changes in positions which are caused by contracting under P.L. 93-638. Because of the variety of residual organizations it is impossible to treat every possible situation within the guidelines; however, our guidelines contain the classification treatment we believe appropriate for the most probable combinations.

At the present time, it appears that changes can be accomplished through existing Civil Service Commission regulations and standards.

10. How many multi-tribal applications were unacceptable because of a negative response from a tribe?

We know of only one instance where this occurred. However, it is possible that some tribes may have informally explored the possibility of contracting with other tribes and decided not to submit a formal application because of the response they received.

11. Explain the 93-638 monitoring device mentioned at the hearings.

The purpose and function of the Contract/Grant Management Information System mentioned at the hearings is stated below:

A. The system will maintain current and historical information concerned with the area of contract and grant application, award and accountability for the purpose of management of such contracts and grants at all levels of responsibility.

B. Principal users of the system will be the area and central office designates whose responsibility is that of contract and grant management.

C. The goals of the system are to receive, edit and update pertinent data into meaningful computer format and output such data as required by various levels of management to aid them in the management decision making process.

The proposal is attached. (Attachment 11-a)

What information will it contain?

The system will provide information concerning the application requirements as contained in 25 CFR 271, contract/grant award, financial accountability, and status and close-out information. Once the system is in place, the Management Information System will also include a management prompting system which will provide the different levels of the Bureau with current status and actions required of any given contract/grant application.

Are you establishing a central statistical data bank?

The ADP system will be able to provide statistical data relating to a given contract or grant, i.e., raw data which would then be aggregated and translated into meaningful statistical profiles, ratios, graphs, etc.

When will this system be operational?

The basic contract/grant information will be captured by October 1 with additional features of the system being incorporated by the beginning of the calendar year.

12. Please elaborate on your answer to question #40 regarding the role of the Department of Labor and the problems of interpretations of §7(b) of the Act. What were the proposed procurement regulations? What comments did you receive from the tribes?

In addition to the cited testimony below which was given on June 7, 1977, with regard to the Department's policy to §7(b) of 93-638, the following are supplied to document the statements on the subject.

Shortly after enactment of P.L. 93-638, we contacted the Department of Labor regarding that Department being the lead agency for 7(b). After two letters and several phone conversations and visits, that Department refused to agree to take the lead on the basis that its function was to assure equal employment opportunity and therefore it felt it should not take the lead in enforcing Indian preference in Federal contracts. The Department of Labor referred the matter to the Office of Federal Procurement Policy. We and our Department have been in contact with OFPP but have been unable to get that office to take appropriate action. This Committee may want to make inquiry.

The Department of the Interior's proposed procurement regulations which will implement §7(b) of P.L. 93-638 were sent to Tribal Leaders for review and comment on March 30, 1977. The comments from tribes are coming to the Department where they will be considered before publication as proposed rulemaking.

The National Tribal Chairmen's Association has proposed an Executive Order, §6 of which would provide:

" SEC. 6. That the Equal Employment Opportunity Commission is hereby designated as the lead agency for the enforcement of Section 7(b) of the Indian Self-Determination and Education Assistance Act with responsibility for monitoring the various agencies' implementation of Section 7(b) and to establish a procedure to handle complaints filed against an agency alleging its failure to carry out its responsibilities under Section 7(b).

The afore mentioned attachments are as follows:

Attachment 12a - Letter dated January 26, 1976 to the Secretary of the Department of Labor from the Commissioner of Indian Affairs.

Attachment 12b - Letter dated June 10, 1976 to the Secretary of the Department of Labor from the Commissioner of Indian Affairs.

Attachment 12c - Letter dated June 15, 1976 to the Commissioner of Indian Affairs from the Department of Labor with enclosed letter (4/16/76) to convene a coordinating group to discuss §7(b).

Attachment 12d - Proposed Department of Interior procurement regulations to implement §7(b).

Attachment 12e - Comments on attachment 12d.

13. Regarding multi-year contracts under §106(c) of P.L. 93-638, do you have any information regarding the number of such contracts which have currently been negotiated? Are there any specific reasons known to your staff why tribes may be disinclined to utilize multi-year contracts?

There have been (2) two year contracts and (110) three year contracts.

We know of no specific reasons why a tribe would not be inclined to utilize a milti-year contract. However, it should be noted that for all practical purposes FY 77 was the first full fiscal year this option was available. Therefore, it is possible that the newness of the option may be one reason more tribes did not take advantage of the milti-year contracting opportunity. In addition, there may have been instances when a tribal governing body might be reluctant to enter into a multi-year contract if an election will take place during the contract term and they do not wish to commit their possible successors.

14. At the hearing, the BIA stated that it would be beneficial to start a "tribe by tribe" budget process. What difficulties would you encounter in implementing this? How would the process work? Why would the process be better? (Question #40).

Changing from a program budget to a "tribe by tribe" budget is a fundamental change that would encounter problems in implementation just like any new concept. It would be new for the tribes, for the Administration, and for Congress. Funding decisions would be viewed not only from a program merit standpoint but there will be more focus on a geographical distribution of funds.

Among the practical operating difficulties would be setting up the base amount for each tribe--that is, identifying the BIA funds allocable to that tribe. We now allocate some programs to Agency levels, but others only to the Area. A greater proqlem will be allocating among tribes at a multi-tribal Agency. A related, very difficult problem, is deciding each tribe's fair share of the BIA budget.

The process would be better because each tribe would assess the impact of the entire BIA budget. It would improve tribal planning and tribal input to the BIA budget. It will allow tribal leaders to select the most effective program mix to meet their unique situations and to make adjustments to recognize changing conditions on their reservation. It will lead to a much needed flexibility in adjusting the expenditures to current local needs rather than those of 18 months earlier as established in the budget.

15. Are you considering any legislation changes in the Buy Indian Act? What problems do you now have under the legislation and what reforms are you considering? Please clarify your answer to this question.

No recommendations for legislative change are currently under consideration.

The primary problem at this time is to make it clear to all concerned that P.L. 93-638 did not in effect repeal the "Buy Indian Act." To alleviate this problem we are drafting proposed "Buy Indian" regulations that will establish the "Buy Indian Act" as a vehicle to procure goods and services that do not fall within the purview of P.L. 93-638.

16. What problems are encountered with contracting large, multi-tribal facilities (i.e., Haskell Indian Junior College)?

Enclosed is a paper entitled "Applicability of P.L. 93-638 to Off-Reservation Programs or Facilities." (Attachment 16-a) The paper discusses the problems encountered with contracting large, multi-tribal facilities. The paper also offers alternative solutions to the problems and solicits other recommendations.

How is tribal input gained?

The Bureau tried to obtain tribal input on the problems encountered with contracting large, multi-tribal facilities by mailing the enclosed paper (Attachment 16-b) to Indian tribes and national and regional Indian organizations as part of a package sent to them on December 8, 1976. A similar letter and the paper were also sent to Bureau Central Office and field officials, the Department's Office of the Solicitor, and the Committees on Interior and Insular Affairs in the House of Representatives and the United States Senate. Comments from all parties were requested by February 18, 1977. The only comments received on the paper were from the Billings and Sacramento Area Offices (Attachment 16-c). No comments were received from Indian tribes or organizations.

What changes to the Act would be necessary?

A legislative change is only one of several proposed alternatives given in the paper to solve the problems. If that alternative is the one chosen by the Indian tribes and organizations, it would involve changing the proviso in §4(c) of the Act. That proviso reads, "Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant."

17. At the June 7th hearing, Mr. LaFollette Butler indicated that BIA action in refusing the contract for lack of funds could be subject to tribal appeals under the declination procedures contained in the regulations. Are you intending to institute such a change in BIA procedures?

Question 17 does not sufficiently cover the scope of Mr. LaFollette Butler's comments on the funding issue. The Bureau is in the process of obtaining legal advice from the Department's Office of the Solicitor concerning the lack of funding issue. A decision on whether to change the procedures will be made at a later date, after the Solicitor's response is considered.

However, pending the Solicitor's response, the Bureau's position is that lack of funds is not currently subject to the appeals procedure for declination given in 25 CFR 271.83 (Attachment 17a). The reason is that the Commissioner's decision on funding is considered to be an exercise of his discretionary authority (§271.83(b)). As such, the Office of Hearings Appeals (which hears appeals of the Commissioner's decision to decline to contract, to amend a contract, or to cancel a contract for cause) will not hear an appeal on funding (see 43 CFR §4.700, Attachment 17b).

In the draft of proposed rules to revise 25 CFR Part 271 which was sent to Indian tribes and National and Regional Indian organizations on December 8, the Bureau proposed establishing a separate appeals procedure for lack of funding issues. As proposed, the Area Directors would make the decision on lack of funding issues with the applicant having the right of appeal to the Commissioner. There would not be any right of further appeal in the Department. The Bureau feels that the separate appeals procedure for lack of funding could be made similar to the declination appeals procedure (for example, by providing for hearings). However, appeals on lack of funding issues would be decided by the Commissioner with no further appeal to the Office of Hearings and Appeals.

As stated earlier, the Bureau's proposal may be revised depending on the response we receive from the Office of the Solicitor.

The following is the other data you requested at the P.L. 93-638 Oversight Hearings.

This is in response to question 10 of your original request regarding contracts entered into at less than amount requested or not entered into because of insufficient funds:

Aberdeen

Tribal Organization (T.O.) Description (D.)	Oglala Sioux Tribe Law and Order Services (Pine Ridge)
Amount Requested (A.R.)	$576,227.16
Amt. Determined Available (A.D.A.)	305,456.03
Amount of Contract (A.C.)	400,806.40

Additional funds were obtained by reducing the budgets of other program activities within the reservation.

T.O. D	Loneman School Corporation School operations
A.R.	265,167.00
A.D.A.	236,167.00
A.C.	265,167.00

Additional funds were obtained by reducing the budgets of other schools on the reservation.

Albuquerque

T.O. D.	All Indian Pueblo Council, Inc. Operation of Albuquerque Indian School
A.R.	2,425,821.00
A.D.A.	2,187,296.00
A.C.	Contract is currently being negotiated for upcoming school year. Therefore, final contract amount is not known at this time.

Anadarko

T.O.	Citizens Band of Potawatomi Indians of Oklahoma
D.	Develop and operate a Pecan Enterprise
A.R.	$ 58,352.00
A.D.A.	-0-
A.C.	No contract has been entered into. Question as to whether this is within purview of P.L. 93-638.

T.O.	North Central Inter-Tribal Council, Inc.
D.	Safety Program for members of the Five Tribes
A.R.	43,691.25
A.D.A.	-0-
A.C.	No contract has been entered into.
T.O.	Cheyenne-Arapaho Tribe
D.	Higher Education Program
A.R.	322,250.47
A.D.A.	168,422.50
A.C.	No contract has been entered into.

Juneau

T.O.	Cook Inlet Native Association
D.	Social Services
A.R.	176,850.00
A.D.A.	129,250.00
A.C.	129,250.00
T.O.	Cook Inlet Native Association
D.	Employment Assistance
A.R.	602,639.00
A.D.A.	380,000.00
A.C.	380,000.00
T.O.	Fairbanks Native Association
D.	Social Services
A.R.	260,571.00
A.D.A.	107,000.00
A.C.	107,000.00

T.O.	United Crow Band
D.	Social Services
A.R.	63,000.00
A.D.A.	56,000.00
A.C.	56,000.00
T.O.	Tanana Chiefs Conference
D.	Social Services
A.R.	164,353.00
A.D.A.	107,000.00
A.C.	107,000.00
T.O.	Tanana Chiefs Conference
D.	Employment Assistance
A.R.	767,677.00
A.D.A.	492,500.00
A.C.	492,500.00
T.O.	Tanana Chiefs Conference
D.	Housing Improvement Program
A.R.	709,370.00
A.D.A.	507,500.00
A.C.	507,500.00
T.O.	Tanana Chiefs Conference
D.	Executive Direction
A.R.	66,699.00
A.D.A.	56,000.00
A.C.	56,000.00
T.O.	Tanana Chiefs Conference
D.	Tribal Operations
A.R.	53,008.00
A.D.A.	41,800.00
A.C.	41,800.00
T.O.	Tanana Chiefs Conference
D.	Realty
A.R.	160,028.00
A.D.A.	121,030.00
A.C.	121,030.00

T.O.	Tanana Chiefs Conference
D.	Higher Education
A.R.	383,745.00
A.D.A.	136,113.00
A.C.	136,113.00
T.O.	Tanana Chiefs Conference
D.	Credit
A.R.	75,468.00
A.D.A.	65,500.00
A.C.	65,500.00
T.O.	Central Council of Tlingit and Haida Indians
D.	Higher Education
A.R.	762,137.00
A.D.A.	378,873.00
A.C.	378,873.00
T.O.	Central Council of Tlingit and Haida Indians
D.	Executive Direction
A.R.	78,775.00
A.D.A.	75,455.00
A.C.	75,455.00
T.O.	Central Council of Tlingit and Haida Indians
D.	Social Services
A.R.	208,685.00
A.D.A.	193,000.00
A.C.	193,000.00
T.O.	Central Council of Tlingit and Haida Indians
D.	Administration
A.R.	74,505.00
A.D.A.	28,845.00
A.C.	28,845.00
T.O.	Central Council of Tlingit and Haida Indians
D.	Tribal Operations
A.R.	64,108.00
A.D.A.	32,400.00
A.C.	No contract as yet, still under discussion.

T.O.	Central Council of Tlingit and Haida Indians
D.	Credit
A.P.	49,317.00
A.D.A.	30,600.00
A.C.	No contract as yet, matter has been appealed to Commissioner.

T.O.	Central Council of Tlingit and Haida Indians
D.	Employment Assistance
A.R.	25,100.00
A.D.A.	-0-
A.C.	No contract - Request was made for transfer of Forestry allocation ($25,100) to Employment Assistance. This was not considered to be appropriate and Area denied request.

T.O.	Mauneluk Association
D.	Social Services
A.R.	34,206.00
A.D.A.	28,768.00
A.C.	28,768.00
	Amount requested was for 12 months, actual contract began on March 1, 1977. Therefore, contract amount does not represent full fiscal year.

T.O.	Mauneluk Association
D.	Employment Assistance
A.R.	171,108.00
A.D.A.	103,459.00
A.C.	103,459.00
	Amount requested was for 12 months, actual contract began on March 1, 1977.

Muskogee

T.O.	Chickasaw Tribe
D.	Adult Education
A.R.	12,300.00
A.D.A.	12,200.00
A.C.	12,200.00

T.O.	Five Northeastern Tribes Enterprises (Miami, Oklahoma)
D.	Indian Action Team
A.R.	354,577.00
A.D.A.	295,969.00
A.C.	295,969.00
T.O.	Creek Tribe
D.	Adult Education
A.R.	48,044.00
A.D.A.	47,444.00
A.C.	47,444.00
T.O.	Creek Tribe
D.	Arts and Crafts
A.R.	52,454.00
A.D.A.	51,954.00
A.C.	51,954.00

Phoenix

T.O.	Havasupai Tribal Council
D.	School Contract
A.R.	169,969.20
A.D.A.	73,300.00
A.C.	96,393.39
	$12,030.39 was financed with Contract Support Funds and the balance came from other educational programs.

Portland

T.O.	Lummi Business Council
D.	Aqua Culture School
A.R.	430,000.00
A.D.A.	131,500.00
A.C.	131,500.00

Indian Technical Assistance Center

Of 79 applications received 48 were not funded and 31 received less funds than were requested. The reason for this is that there were insufficient funds available.

The following constitutes supplemental material to the dialogue with the Committee in respect to the Bureau's utilization of the services of Sterling Institute.

1. In early 1976 the Central Office was engaged in preparing procedural guidelines and other documentation pertaining to implementation of a grant program authorized under Section 104(a) of the Act. In order to expedite preparation of this critical material, two purchase orders were issued by the Central Office to Sterling Institute. One, issued April 14, 1976 for $9,300 required Sterling to develop grant procedures and prepare agreement forms for the procedural guidelines for this new grant program. Another, issued May 27, 1976, for $7,039 required Sterling to prepare camera ready briefing materials keyed to the procedural guidelines for this same grant program.

   The service thus provided to the Central Office by Sterling was a material factor in the early preparation of the Procedural Guidelines for the Self-Determination Grant Program. This permitted an early distribution of the guidelines to Area and Agency offices and facilitated immediate implementation of the grant program when funding became available late in FY '76.

2. Overlooked in the discussions with the Committee was a contract for $27,000 dated 6/17/76. This also related to the timely implementation of the grants program and provided the following services:

   a) Conduct of 11 eight hour briefing sessions at varied Area locations throughout the country for approximately 50 Bureau and tribal participants at each location between 6/21/76 and 7/15/76.

   b) Prepare 600 sets of briefing materials.

   c) Provide administrative support including briefing announcements, facilities, scheduling coordination, etc.

   d) Provide for participant evaluation and a final written report.

3. On its own initiative, Sterling Institute has developed and presented on an individual basis a five-day course on P.L. 93-638 grants and contracts. This is a well-organized, comprehensive course that covers the intent and general features of P.L. 93-638 and essential requirements for implementation. Sterling Institute has offered this course at major cities throughout the country, and we estimate that as many as 435 Bureau employees may have attended these courses.

   They have also presented two three-day courses in Washington, D.C. to a total of 65 of the Bureau's Central Office employees. These were paid for by a Bureay purchase order in the amount of $14,625. This was a quick and effective way to familiarize key Central Office employees with the purpose and scope of P.L. 93-638, as well as the regulations and guidelines developed for the implementation of the legislation.

SUMMARY:

As noted above, the Bureau's Central Office has utilized Sterling Institute to effectively assist us in getting the grant program authorized by P.L. 93-638 off to a quick and effective start, as well as in providing intensive training to large numbers of Bureaue employees on the full scope of this milestone legislation.

In response to the committee's inquiry at the June 7th hearing regarding number of employees displaced because of P.L. 93-638 contracting and the number of tribal employee positions created we supply the following information:

Number of employees displaced: approximately 717
Number of tribal employee positions created: approximately 4,629

Also attached is summarized information of the seventy-nine contract applications submitted to the Indian Technical Assistance Center that did not receive funding. (Attachment 18a)

We hope this provides adequately the information you requested.

Sincerely,

Acting Deputy Commissioner of Indian Affairs

Attachments

Memorandum

To: Area Directors

From: Commissioner of Indian Affairs

Subject: FY 1977 Public Law 93-638
Training and Technical Assistance Policy Guidance

This memorandum contains policy guidance to be followed by Areas and Agencies in the implementation of the training and technical assistance (T & TA) effort in FY '77 utilizing funds appropriated for that purpose in support of P.L. 93-638 under account 3200/2662. Because FY '77 will constitute our first full year of T & TA activity under P.L. 93-638, it is exceedingly important to get off to a good start and to use our experience from this effort to shape the future course of these functions which are so integral to our overall success in implementing this legislation. The guidelines provided here are deliberately designed to be general and to offer maximum flexibility to Areas and Agencies as well as program administrators while final guides and regulations are being developed, considered, and refined.

It goes without saying that Public Law 93-638 and the regulations found in 25 CFR 271-277 must serve as the basic guides for this effort. However, as an additional guide, you will find attached for your information a copy of the justification for the use of these funds which was presented to the Congress and which was also given to OMB and the Department in support of the funding.

TRAINING AND TECHNICAL ASSISTANCE GUIDELINES

I. INTRODUCTION

By its very nature P.L. 93-638 offers a number of options and opportunities to Indian tribes, and mandates certain actions by the Bureau of Indian Affairs. Along with monies for contract support and Section 104(a) grants, the funds for T & TA are the only additional dollars appropriated by the Congress in support of this landmark legislation. It is our belief that the Congress has seen fit to support this monetary request because it has recognized that such assistance is essential for the successful implementation of the Act.

The training aspect is based on two premises. The first is that P.L. 93-638, because it mandates certain actions by the Bureau, necessitates that Bureau staff receive the training required for them to carry out the new responsibilities placed upon them in order to help the tribes effectively utilize their options under the legislation. It is also necessary to fully foster acceptance of the policies and philosophy of this legislation among Bureau staff. Secondly, and perhaps more important, is the need to similarly provide training opportunities to tribal personnel so that they will be able to develop a complete understanding of the legislation as well as the skills necessary to utilize the options and opportunities available to them under the Act.

In respect to the technical assistance, it is noted that the Act itself provides that technical assistance be provided at the point a tribal application for a contract is declined by the Bureau. (See Section 102(b)(2) of the Act.) In addition, the regulations mandate a number of other instances in both the contracting and grant processes where technical assistance must be offered to tribes. Therefore, the obligations and authorizations contained in the Act and Regulations become the primary priorities for the utilization of these technical assistance funds. The second priority should be in relation to all other activities which support the basic intent of the legislation. This includes those which enhance a tribe's ability to contract for Bureau and other Federal programs; those which otherwise strengthen tribal government and especially their managerial capability; activities which would enable tribes to utilize the personnel options under the Act; and also other activities which would enable tribes to give direction to Bureau and other Federal programs serving tribes by means of planning, designing, monitoring, and evaluating those activities.

II. FUNDING

Under separate cover, each Area has been advised of its FY 1977 allocation of T & TA funds. From these allocations, the Areas are to fund the positions authorized in the memorandum dated February 20, 1976, which states that ceilings for 33 permanent employment positions were being established for the Areas for the express purpose of coordinating and implementing P.L. 93-638 efforts.

In accord with information provided from the Central Office at that time, these positions must support the P.L. 93-638 effort at each Area and particularly the programmatic aspects of grants as well as T & TA.

Aside from meeting the above need consistent with information provided the Central Office, the Area Directors shall have the responsibility for the precise determination of fund allocations both with regard to training vis-a-vis technical assistance, as well as in respect to the various tribes within the Area. This must, however, be in accord with the priorities established in this memorandum.

In addition to the funds already allocated, there is under consideration a further determination and reallocation of dollars currently held at the Central Office for support of T & TA of a generic nature. Specific information and guidelines for the use of these funds can be anticipated from this office within about six weeks.

From the outset it should be understood that the number of dollars available will be far short of the anticipated need. Therefore, in the administration of this effort, full utilization must be made of other resources including but not limited to: (1) regular Bureau program staff, (2) other funding sources within the Bureau including self-determination grants, and (3) resources from other Federal agencies, in particular, and from private sources when possible.

III. ROLES AND RESPONSIBILITIES FOR ADMINISTRATION OF T & TA SERVICES

A. Central Office

Central Office responsibility for the T & TA effort lies in the newly created Division of Self-Determination Services. Efforts are currently underway to staff this division to provide full-time direction to the P.L. 93-638 grants and T & TA activities. In general, it is anticipated this division will be responsible for traditional Central Office staff functions including policy development, technical assistance, and program evaluation. Area and field staff will be kept advised of progress in the staffing and operations of this office.

B. Area Offices

At the Area level, it is essential that the Area Directors each designate an individual to assume the responsibility for the coordination and direction of the T & TA effort. With few exceptions, this is of such significance that it will require the full-time attention of at least one individual in each Area Office.

The Area Offices will make the decisions for the allocation of funds between Training and Technical Assistance as well as for the allocations to meet the needs of tribes under their jurisdiction. In order to carry out their responsibilities, each Area is to develop a comprehensive plan for administration of the T & TA effort within the Area. The plan will address the specifics of both the Training and Technical Assistance aspects. Please proceed with this immediately, based on these guidelines, being responsive to the needs of your respective Area. A copy of the plan to be provided this office for the attention of the Division of Self-Determination Services by no later than April 1, 1977. You will be advised later as to requirements for periodic reports.

Another duty of the Areas is to keep Agencies fully informed concerning all aspects of the T & TA effort. In accord with this, copies of this memorandum should be furnished by your office to each Agency under your jurisdiction.

C. Agencies

While no additional staffing or funding is available at the Agency level for T & TA, it is strongly urged that Agency Superintendents assign specific responsibility for T & TA to a member or members of their present staff. It is essential that key personnel at each Agency be fully aware of the responsibilities of the Bureau in respect to T & TA under P.L. 93-638 and of the resources available to carry out those responsibilities. Based on such knowledge, it becomes their particular responsibility to convey full information concerning it to the tribe or tribes under their jurisdiction and to work with them closely to see that such T & TA is afforded them consistent with their needs. It is particularly important that these key personnel at the Agency level have the opportunity to participate in training sessions which will enable them to carry out their responsibilities.

IV. TRAINING

The mandate of P.L. 93-638 regarding T & TA includes training of both Bureau personnel and tribal leaders and staff.

A. Training Bureau Personnel

As the Central Office Division of Self-Determination Services becomes staffed, it is anticipated that it will carry a major leadership role in specifics such as (1) assessing common needs which appear to prevail throughout Indian country; (2) developing prototype or model systems to meet such needs; (3) putting together training packets, including development of material; and (4) performing similar activities.

At the present time, there needs to be continuing attention to general orientation, but we must also address specific needs in the following areas: (1) training program personnel in the art of providing technical assistance v. past emphasis on direct service delivery, (2) contract administration and monitoring, (3) personnel aspects of P.L. 93-638, (4) grants administration, and (5) similar training efforts which will enhance both the mechanics and philosophy of P.L. 93-638.

While overall leadership will be provided by the Central Office staff, it is vital that the Areas develop specific programs to meet their needs. In carrying out this responsibility, a variety of resources may be used including Bureau personnel from various programs and administration levels. Other agencies of the Federal Government such as the Civil Service Commission, higher education institutions, and private contractors may also be used to perform this service.

Training activities for Bureau employees will be coordinated with the Bureau's Branch of Employee Development at the Central and Area Office levels who are responsible for the planning, development, coordination, direction, and implementation of comprehensive Bureau-wide programs in the broad areas of employee development under Executive Order 11348 of April 20, 1967.

B. Training Tribal Representatives

As indicated previously, our responsibility for training goes beyond Bureau needs and must attend to the needs of the tribes themselves. While perhaps the major emphasis of

T & TA efforts in behalf of tribes will be in technical assistance, we should retain strong recognition of training needs and work closely with them in developing meaningful training opportunities for them.

In the past year, much of the emphasis has been devoted to the orientation of tribal representatives to the Act itself. During the next year, you should continue this direction as needed. In addition, the Areas shall have the responsibility for working closely with tribes in determining other training needs and directing efforts toward a plan for providing training services.

Such training may relate to needs of individual tribal leaders and/or staff or may be directed to groups from within one tribe or from several tribes.

V. TECHNICAL ASSISTANCE

As stated in the introduction, both the Act and the Regulations require the Bureau to provide technical assistance in specified instances where tribes or tribally approved organizations choose to exercise one of the options P.L. 93-638 provides. Moreover, it is our policy to provide, upon request, such additional technical assistance as our fiscal and manpower resources allow in order to promote the general philosophy and intent of the Act. In so doing, we should be mindful that while the Bureau is required under certain circumstances to offer technical assistance, particularly in the contract and grant processes, the tribes and tribal organizations are the sole determinants as to whether it will be accepted and utilized. Irrespective of some non-receptive attitudes, it is essential that tribes be made fully aware of this service and that we continually strive to develop a climate which will maximize a tribe's chance to develop the degree of direction to the extent they desire over the Federal programs created for their benefit.

To carry out our responsibilities for technical assistance in both the contract and grant processes, it is of critical importance that all personnel working in these Areas be fully aware of the responsibilities imposed upon the Bureau to provide technical assistance as set out in the Act itself and in the regulations (25 CFR 271, 272, and 276).

However, neither the Act nor the regulations detail the form in which the technical assistance is to be made available and it is to this matter that these guides are primarily addressed. In so doing, it should be stressed that as plans for providing technical assistance are developed, there should be maximum tribal participation so that the assistance provided will be responsive to the greatest extent possible to how they perceive their needs. In order that a better idea might be obtained as to how the tribes currently perceive these needs, a questionnaire jointly prepared by ONAP, IHS, and the Bureau has been recently sent to all tribes. The returns are now coming in and it is expected that the results of this survey will be available fairly early in 1977.

While tribal involvement is a priority concern, it is also important that the technical assistance effort,within an area be realistically attuned to the resources available. Consequently, while some special technical assistance funds have been allocated, the necessity to continue to also fully utilize other technical assistance resources is repeated. This includes use of various Bureau staff personnel having a wide variety of expertise, Section 104(a) grants, as well as other Bureau program funds where appropriate, and manpower and financial resources from a wide variety of other agencies, both Federal and non-Federal.

Concerning the technical assistance funds which have now been allocated to the Areas, each Area will need to devise a means of using the funds in a manner which best meets the needs of the tribes it serves. Previously, it has been noted that a portion of the T & TA funds should be used for training purposes. The remainder should be used for the technical assistance needs of the tribes within the Area, dividing it in a manner which is as equitable as possible, taking into consideration a variety of factors, which include, but are not limited to:

1. Services mandated by the Act and Regulations in contracting and grant processes.

2. Other activities undertaken by tribes which are authorized or directly consistent with the Act.

3. Availability of other resources outside the tribe.

4. Availability of tribal resources in comparison with those of other tribes in the Area.

In the use of funds for technical assistance, it is suggested that purchase orders and contracts will be the prime means used. For instance, if a tribe is having problems with their accounting system in respect to a contract, funds could be used to purchase expert advice from an accounting firm of their choosing to assist in overcoming the problem and perhaps to assist the staff in avoiding its repetition in the future. Or, perhaps, funds could be made available to a tribe so it could employ a consultant to assist in revising a contract proposal to correct aspects which might give cause for declination. Funds could be matched with tribal allocations or funding from other sources on specific projects, where appropriate.

For the present, no formal application process is being directed from this office. However, each Area should advise the tribes and the Agencies in its jurisdiction of the resource and inform them of the procedures to be followed in directing their requests to the attention of the Area Office. As specified above, this latter should be done following consultation with the tribes in developing a system appropriate to the particular Area.

In addition to the funds disbursed to the Areas, some funds will be used for Central Office contracts or agreements with other Federal agencies which will have either Bureau-wide significance or impact extending beyond a single Area boundary. Some examples of this would be development of management system models, such as for financial management systems, or agreements with the Civil Service Commission to help tribes in the development of personnel systems. Such projects are either underway or in the planning stages with the Denver, Dallas, and San Francisco regions.

Your past assistance in helping the Bureau to successfully address its responsibilities in relation to P.L. 93-638 has been appreciated, and we shall be grateful for your continuing to place a top priority in respect to the T & TA effort addressed herein.

(Sgd) Ben Reifel

cc: Surname
Chrony
BCCO
Mailroom
10-:TCKrenzke:sed 1/26/76

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

/A

BIAM ADDITION TO FPM 44-37

Memorandum

Date: JUN 15 1976

To: Holders of Federal Personnel Manual

From: Commissioner of Indian Affairs

Subject: 44 BIAM 334 Temporary Assignment of Employees Between Executive Agencies, and States, Local Governments and Institutions of Higher Education

The attached manual release incorporates Bureau Personnel policies in implementing the Intergovernmental Personnel Act. Material from the Federal Personnel Manual has been included in this release for the convenience of tribal groups. Complete instructions for initiating an IPA agreement are included in this issuance.

Morris Thompson
Commissioner of Indian Affairs

Filing Instructions:

(a) Remove superseded material:
None

(b). Insert New Material Transmitted:

44 BIAM 334, Table of Contents	(1 sheet)
44 BIAM 334, Subchapter 1.1 through 4.2C	(9 sheets)

(c) Pen-and-ink changes:
None

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Chapter 334 Temporary Assignment of Employees Between Executive Agencies, and States, Local Governments and Institutions of Higher Education

Subchapter 1. General Provisions

1.1 Policy. It is the policy of the Bureau of Indian Affairs to encourage assignments between Bureau employees and State and local governments, recognized Indian tribes or tribal organizations, and institutions of higher education under the provisions of the Intergovernmental Personnel Act of 1970. The objective of the Act is to provide mobility assignments for employees for temporary periods of up to four years. Work assignments should provide an opportunity for experience and understanding at different levels of government operation, thereby improving the employee's effectiveness in his regular assignment. Utilization of the provisions of this Act also provides an excellent method for training and exchange of expertise between tribal governments and the Federal sector as a preparatory step for contracting a Bureau function.

Intergovernmental Personnel Act assignments may be made at any time a mutual agreement has been reached between the State or Local Government, tribe, or tribal organization, the Bureau, and the employee. Assignments may be initiated by any of the organizations or by the Bureau.

1.2 Coverage. Employees in both the competitive and excepted service are eligible for temporary assignments under the Intergovernmental Personnel Act. Employees on a time limited appointment may be assigned under the provisions of this Act; however, care must be taken to assure the agreement does not exceed the time limitations of the appointment.

1.3 Exclusion. An IPA assignment is not an appropriate method for filling a tribal position in which the selection for the individual was made through the conventional election process. Any questionable case should be directed to the Washington Office for approval by the U.S. Civil Service Commission, Washington, D.C.

1.4 Reimbursement for Assignments. Agreements for assignments may be with or without reimbursement. The assignment must be mutually beneficial to the Bureau and the organization involved. The Bureau, whenever possible, will pay the salary of employees on detail to a tribe or tribal organization.

In instances where the Bureau is reimbursed for at least 50% of an employee's salary, that employee will not be counted against the Bureau's employment ceiling during the time of the assignment. See 44 BIAM 334, 2.8.

1-9. APPLICABLE CONFLICT OF INTEREST LAWS AND STANDARDS OF CONDUCT PROVISIONS

a. A State or local government employee on assignment to an executive agency is subject to a number of provisions of law governing the ethical and other conduct of Federal employees. Briefly, the provisions of title 18, United States Code, prohibiting certain kinds of activity to which these employees are, subject are:

— Section 203 (receiving compensation for claims, contracts, etc.);

— Section 205 (prosecuting claims against and other matters affecting the Government); *

— Section 207 (prosecuting claims involving matters connected with former duties—disqualification of partners); *

— Section 208 (employee or a special Government employee acting or participating in any matter in which he, his immediate family, his partner, or the organization with which he is connected or is seeking employment has a financial interest);

— Section 209 (an employee receiving salaries or contributions from other than Government sources for his Government services);

— Section 602 (solicitation of political contributions generally);

*Modified by P.L. 93-638. Employees must notify Federal agency before which the matter is pending of any prior involvement in the case.

Subchapter 2. Assignment Agreements.

2.1 Negotiation for Assignments. Assignment on detail or leave without pay under the provisions of this Act may be initiated by the Bureau, the tribe or tribal organization, a State and local government, or institution of higher education. The initial negotiations may be in person to reach a mutual understanding of the assignment; however, the offical request for a Bureau employee must be in writing, outlining:

A. The purpose and objectives of the assignments;

B. The employee's skills and background required;

C. The length of the assignment; and,

D. The share of salary and other expenses the requesting organization will pay.

2.2 Bureau Responsibility.

A. Before an employee makes a decision on a pending assignment, he must be informed of the choices he has in connection with his rights and benefits if he is assigned on leave without pay from any jurisdiction. He must also be aware of his obligations and responsibilities for the preservation of these rights and benefits.

B. When developing an assignment which involves the movement of a State, local government, tribe, or tribal organization employee to the Bureau, specific provisions should be made in the agreement that the employee involved can return to his home agency in a position comparable to that from which he was assigned and that his rights and benefits will be fully protected.

C. In negotiating an agreement, it should be kept in mind the effect of assignments upon the rights of an employee flowing from collective bargaining agreement or established relationship under either State or local laws or regulations or Executive Order 11491.

2.3 Assignment Agreement. (OF-69) The Civil Service Commission Form 69-Assignment Agreement, will be used to document each mobility assignmen The form will be signed by the requesting officer, the assignee, and the authorized Bureau official.

2.8 Reporting on SF-113 Report.

A. Employees on detail to another organization shall not be counted on the SF-113 report if the gaining organization pays 50% or more of the employee's salary. A SF-50 shall be coded as follows:

(1) Nature of Action Code: 977 Detail under IPA-Salary reimbursement 50% or more. Remarks: Detailed to (name of organization) in accordance with IPA. (Name of organization) will pay ___% of salary.

(2) Nature of Action Code: 978 Detail under IPA-Salary Reimbursement less than 50%.
Remarks: Detailed to (name of organization) in accordance with IPA. (Name of organization) will pay ___% of salary.

B. When IPA is completed, a SF-50 will be cut putting the employee back into the employee count for the SF-113 report. A SF-50 shall be coded as follows: Nature of Action Code: 979 Expiration of Detail Remarks: Completion of IPA Assignment with (name of organization)

C. Employee on detail to another organization and the detail is non-reimbursable will remain on the SF-113 count.

D. Employee on detail from another organization shall not be reported on the SF-113 report.

E. Employees appointed as a result of an IPA Assignment shall be counted on the SF-113 report if their appointment is for 30 days or more. The nature of action code will be 171. Exc. Appt. NTE ________________. Civil Service Authority 5 USC 3374.

F. A copy of the Agreement form shall be placed in the employee's OPF.

G. It is not necessary to submit copy of SF-50 IPA Detail to Civil Service Commission.

H. Employee on an IPA leave without pay assignment to another organization shall not be counted on the SF-113A report if the period of leave without pay exceeds 30 calendar days.

44 BIAM 334,2
Illustration I
Page 1 of 4 pages

ASSIGNMENT AGREEMENT

TITLE IV OF THE
INTERGOVERNMENTAL PERSONNEL ACT OF 1970
5 U.S.C. 3371-3376

INSTRUCTIONS

This agreement constitutes the written record of the obligations and responsibilities of the parties to a temporary assignment arranged under the provisions of the Intergovernmental Personnel Act of 1970.

As the term "State or local government" occurs on the form, it should be understood also to refer to an institution of higher education.

Copies of the completed and signed agreement should be retained by each signatory.

Two copies should also be sent to:

Office of Faculty Fellows and Personnel Mobility
Bureau of Intergovernmental Personnel Programs
U. S. Civil Service Commission
Washington, D. C. 20415

Procedural questions on completing the agreement can be answered by staff in the Intergovernmental Personnel Programs Divisions in U. S. Civil Service Commission regional offices. See page 4 for listing.

PART I—INFORMATION CONCERNING THE PARTICIPATING EMPLOYEE

NAME (*Last*) (*First*) (*Middle*)

SOCIAL SECURITY NUMBER

BIRTH DATE (*Month, day, year*)

HOME ADDRESS (*Street, city, state, ZIP code*)

HOME PHONE (*Including area code*)

PART II—PARTIES TO THE AGREEMENT

FEDERAL AGENCY (*Identify agency down to the level that is party to the agreement.*)

STATE OR LOCAL GOVERNMENT (*Identify the governmental agency fully.*)

PART III—POSITION DATA

POSITION CURRENTLY HELD

OFFICE OF EMPLOYMENT

LOCATION OF OFFICE

JOB TITLE

Federal Grade:
State or local salary:

OFFICE PHONE (*Including area code*)

TYPE OF APPOINTMENT (*Federal Employees*)
☐ Career Competitive
☐ Schedule A or B
☐ Other
☐ Schedule C

NAME AND TITLE OF IMMEDIATE SUPERVISOR

POSITION TO WHICH ASSIGNMENT WILL BE MADE

OFFICE OF EMPLOYMENT

LOCATION OF OFFICE

JOB TITLE

NAME AND TITLE OF IMMEDIATE SUPERVISOR

PART IV—TYPE OF ASSIGNMENT

TYPE (X) IN APPLICABLE BOX

☐ on detail from a Federal agency to a State or local government agency
☐ on leave without pay from a Federal agency to a State or local government agency
☐ on detail from a State or local gov't agency to a Federal agency
☐ on appointment in a Federal agency from a State or local gov't agency

PERIOD OF ASSIGNMENT

FROM (*Month, day, year*)

TO (*Month, day, year*)

U.S. CIVIL SERVICE COMMISSION
FPM — CHAPTER 334 50 69-102

(over)

Optional Form 69
July 1974

Manual Release 44-37. 6/15/76

PART IX—CONFLICTS OF INTEREST AND EMPLOYEE CONDUCT

☐ Applicable Federal, State or local conflict-of-interest laws have been reviewed with the employee to assure that conflict-of-interest situations do not inadvertently arise during this assignment.

☐ The employee has been notified of laws, rules and regulations, and policies on employee conduct which apply to him while on this assignment.

PART X—OPTIONS AND/OR ENTITLEMENTS

Federal Employees Group Life Insurance (*Indicate coverage or "N.A." if not applicable.*)

☐ Covered ☐ N.A.

Federal Civil Service Retirement (*Indicate coverage or "N.A." if not applicable.*)

☐ Covered ☐ N.A.

Other Benefits (*Indicate any other employee benefits to be made part of this agreement.*)

Federal Employees Health Benefits (*Indicate coverage or "N.A." if not applicable.*)

☐ Covered ☐ N.A.

State or Local Agency Benefits (*Indicate all State employee benefits that will be retained by a State or local agency employee being assigned to a Federal agency. Also include a statement certifying coverage in all State and local employee benefit programs that are elected by the Federal employee on leave without pay from the Federal agency to a State or local agency.*)

PART XI—TRAVEL AND TRANSPORTATION EXPENSES AND ALLOWANCES

Indicate whether the Federal agency or State or local agency will pay travel and transportation expenses to, from, and during the assignment as specified in Chapter 334, of the Federal Personnel Manual.

PART XII—APPROVALS

ASSIGNED EMPLOYEE'S STATEMENT

I, ______________________________, understand the terms of this agreement

providing for my assignment to the position of ______________________________

______________________________ at (location) ______________________________

______________________________ from (date) ______________ to ______________

SIGNATURE OF ASSIGNED EMPLOYEE | DATE OF SIGNATURE

TATE OR LOCAL GOVERNMENT AGENCY	FEDERAL AGENCY
TYPED NAME AND SIGNATURE OF AUTHORIZING OFFICER	TYPED NAME AND SIGNATURE OF AUTHORIZING OFFICER

Subchapter 3. Assignment of Federal Employees to State and Local Governments and Tribal Organizations

3.1 Assisting Tribal Organizations. In conjunction with the Indian Self-Determination Act, the Bureau anticipates an increasing number of requests for the use of details to tribal organizations as provided through the amendments to the Intergovernmental Personnel Act. Each management official should be sensitive to the needs and requests of tribal officials for assigning Bureau employees. If there is no local Bureau employee available for assignment, assistance should be provided the tribal official in locating a qualified individual from another Federal Agency. Tribal employees should be encouraged to accept assignments in the Bureau under the provisions of the IPA. (See 44 BIAM 334,4)

3.2 Employees on Detail. A Federal employee on detail under an IPA assignment shall retain all of his Federal benefits. He will continue to receive his pay and benefits from funds available to the Bureau even though these may be reimbursed to the agency in whole or in part. If the detail is reimbursable, the agreement must spell out what portion of the agency contributions each organization agrees to pay. He will continue to earn leave and absence from duty charged against that leave. Hours of duty will be determined by State or local Government subject to the 40-hour work week and the 8-hour non overtime day requirement for Federal employees. An employee will be excused for federal holiday without charge to leave or receive pay for work performed on a federal holiday. He may be excused from duty on a State holiday without charge to leave, or be required to work without premium pay.

3.3 Employees on Leave Without Pay. A Federal employee on leave without pay is given an appointment by the gaining organization in accordance with the terms of the agreement. The employee is paid by the organization to which he is temporarily assigned.

A. Supplemental Pay. When the employee's pay from the gaining organization is less than the pay he would have received had he remained in the Bureau, the Bureau will make a supplemental salary payment to equal his former Federal pay. The determination for supplemental pay will be made by the appointing official authorizing the assignment.

(4) If the employing organization pays a salary higher than the employee's basic salary, the basic pay of his Federal position constitutes the maximum amount of salary which may be considered for Civil Service retirement purposes.

E. Group Life Insurance and Health Benefits.

(1) Continuation of health benefits and life insurance coverage will be permitted for the duration of the employee's assignment provided the employee and agency pay their share of the premiums. There is no period of free coverage for these employees.

(2) An employee may not be covered by the Federal life insurance and health benefits programs if he elects coverage under the employing organization's plan if the Commission determines the plan is similar to the programs for Federal employees.

3.4 Bureau Responsibility. As part of the written agreement, the Bureau must furnish the employee with specific information about how, when and where payments for employee benefits are to be submitted. For retirement and group life insurance purposes, the Bureau is responsible for determining the basic rate of pay for the employee. The Bureau is also responsible for timely collections of, accounting for, and depositing in the respective funds all retirement, group life insurance, and health benefit payments required to protect the rights of the employee on leave without pay and for accounting for and depositing in the respective funds all agency and employee contributions.

The employee's failure to deposit the payments on time will terminate full retirement credit, and coverage under the group life insurance and health benefits programs on the last day of the pay period for which payments were currently deposited, subject to a 31-day extension of group life insurance and health benefits. Coverage may commence when the employee actually enters on duty in a pay status in the Bureau. However, full retirement credit and group life insurance and health benefits coverage may be reinstated retroactively when, in the judgement of the Commission, failure to make the required current deposits was due to administrative error or other circumstances beyond the control of the employee and the required payments were deposited at the first reasonable opportunity available to the employee.

Subchapter 4. Assignment of an Employee From a State or Local Government or Tribal Organization.

4.1 Individual on Detail. An individual on detail to the Bureau from a State, local government, tribe or tribal organization is not entitled to Federal pay but is considered a Federal employee for the purposes of the Federal employee laws as noted in 44 BIAM 334,1.7 and Illustration 1, applicable conflict of interest laws, and standards of conduct provisions. The Bureau is responsible for informing the employee about the applicable conflict of interest laws and standards of conduct provisions. It is important that the above provisions be fully explained and completely understood prior to the mobility assignment.

4.2 Appointment of State, Local Government, tribe or tribal organization Employee Receiving a Federal Appointment.

A. An individual may be given a two-year temporary appointment. The appointment may be extended for not more than an additional two year period. The appointment is not subject to the Federal retirement system or the Federal Employees Group Life Insurance program. The employee is not eligible to enroll in the Federal Employees Health Benefits program unless his Federal appointment results in the loss of coverage under a State or local health benefits system. In such case the employee will be given a right to enroll in the Health Benefits program.

B. If the State, local government, tribe or tribal organization fails to continue the employer's contribution to the local retirement, or life insurance, or health benefits plan, the Bureau may pay the employer's contribution during the employee's period of assignment. The Bureau will transmit any such contributions directly to the State or local government system.

C. Personnel Action Documentation. Enter "171 Excepted Appointment NTE" as the personnel action code and nature of action on the appointment document. The appointment authority is cited as 5 U.S.C. 3374.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

BIAM ADDITION TO FPM 44-38

Memorandum

Date : DEC 16 1976

To: Holders of Federal Personnel Manual

From: Acting Deputy Commissioner of Indian Affairs

Subject: 44 BIAM 990 General and Miscellaneous

The attached manual release incorporates Bureau Personnel policies in implementing certain provisions of P.L. 93-638, Indian Self-Determination and Education Assistance Act, January 4, 1975 and Tribal direction of Bureau employees - 1834 Act. This material was written not only as Bureau instructions, but also for the convenience of information to tribal officials.

Commissioner of Indian Affairs

Filing Instructions:

(a) Remove superseded material:
None

(b) File new material:

44 BIAM 990, Table of Contents	(1 sheet)
44 BIAM 990, Chapters 1 through 7	(17 sheets)

(c) Pen-and-ink changes:
None

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Subchapter 7. Intergovernmental Personnel Act - Civil Service Commission Personnel and Training Assistance for Indian Tribal Governments

Subchapter 1 P.L. 93-638 Indian Self-Determination and Education Assistance Act, January 4, 1975

1.1 Personnel Provisions of the Act

A. The Indian Self-Determination and Education Assistance Act provides an opportunity for Federal employees to retain certain Federal benefits when they accept tribal employment. A mutual agreement must be reached between the tribe and the employee in order for the employee to retain benefits at the time he leaves Federal service to accept employment with a tribal organization.

B. The Act amends portions of the Intergovernmental Personnel Act (84 Stat. 1909) to permit Indian tribes and tribal organizations to participate in the various programs provided for in the Act. (44 BIAM 990.7 and 44 BIAM 334).

C. The Act amends the conflict of interest provision applicable to Federal employees on a mobility assignment to an Indian tribe or tribal organization; former Federal employees employed by the tribe or tribal organization; or, Federal employees receiving direction from the tribe in accordance with 25 U.S.C. 48. Title 18, U.S.C. 205 and 207 were amended to provide for an individual to represent a tribe or tribal organization in a matter pending before the Government and for prosecuting claims involving matters connected with former duties. The individual must notify the Commissioner of Indian Affairs prior to appearing before the Government.

Subchapter 2. Methods available to tribes for utilizing services of Federal employees and former Federal employees

2.1 Intergovernmental Personnel Act. (IPA). P.L. 93-638 amended the IPA to permit Indian tribes and tribal organizations to participate in the mobility provision for assignment for a Federal employee to these organizations. The use of the IPA provides a means whereby the tribe may utilize the services of a Federal employee in developing, or planning, a Bureau program or a portion of a program, and to assist them in operating tribal programs. An individual on an IPA assignment remains a Federal employee, retaining Federal rights and benefits, while under the direct supervision of an Indian tribe or tribal organization.

A. In negotiating an IPA agreement, all three parties - the Bureau, the employee, and the tribe - should keep in mind, even though an individual is on an IPA assignment, that individual remains an employee of the Bureau. If it is necessary to have a reduction-in-force, the employee will be considered the same as if he were working in the position for which he was primarily employed and will not receive special consideration because he is on an IPA assignment.

B. As an example, an employee from an Agency Office Social Service Program is on an IPA assignment to a tribe. The tribe subsequently negotiates a contract with the Bureau to administer the Social Services Program at the Agency. The employee on IPA assignment would then be faced with one of three possibilities: (1) the need for reassignment to another location; (2) reduction-in-force; or (3) direct hire by the tribe. If the employee is reassigned to another position and the tribe wanted the services of this individual by a method other than direct hire, another IPA agreement could then be negotiated by the tribe, the employee, and the Bureau. On the other hand, if the same employee is to be separated through reduction-in-force, then it would be up to the tribe to offer the individual employment directly with the tribe if his services are to be continued. The tribe and employee could then reach a mutual agreement whereby the employee could retain: (1) Federal retirement; (2) Health benefits; (3) Life insurance, and (4) Federal employees compensation, provided the tribe agreed to pay the employer share and withholds the employee contributions and there is no break in service from Federal employment to tribal employment. Detailed procedures and guidelines for IPA Agreement - See FPM 334, 370 DM 334 and 44 BIAM 334.

2.2 Tribal Direction of Federal Employees - 1934 Act (25 U.S.C. 48). There may be times when a tribe desires to direct the day-to-day activities of Bureau employees either as a method of: (1) staffing in association with a contracted program; or (2) directing programs on their reservation without contracting. This may be accomplished by an agreement with the tribe to permit them to provide direction to Bureau employees of the program or activity. This may be accomplished through the provisions of 25 U.S.C. 48 which reads:

> "Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe."

The Solicitor for the Department of the Interior, in his opinion M - 36803 dated April 3, 1970, stated:

> "The authority to direct the employment of Federal employees which the Secretary of the Interior may delegate to an Indian tribe pursuant to the provisions of R.S. 2072, 25 U.S.C. 48 (1964), is that authority related to the direction of employees and within the general range of the duties of their employment. The authority to direct the employment of Federal employees which the Secretary of the Interior may delegate to an Indian tribe pursuant to the provisions of R.S. 2072, 25 U.S.C. 48 (1964), may not include authority to employ, promote, or evaluate the performance of employees, nor authority to approve the alienation of rights in trust property, nor authority over Individual Indian Money Accounts, nor authority to expend or encumber appropriated Federal funds; nor authority to review or approve tribal actions, nor authority which abrogate employee rights granted by Executive Order, or regulation, nor authority to issue, amend, or waive Federal regulations."

230 DM 1 delegates to the Commissioner of Indian Affairs the authority of the Secretary of the Interior with respect to the management of all Indian affairs and all matters arising out of Indian relations, including the supervision, management and operation of the Bureau of Indian Affairs and related activities of the Department with respect to Indian program matters. 230 DM 1.3 restricts the Commissioner from redelegating

authority to permit Indian tribes to direct Bureau employees under 25 U.S.C. 48.

A. Consideration for an Agreement. An agreement must be worked out between the tribe, the Agency Superintendent and the Area Director, for approval by the Commissioner. The agreement shall clarify the relationship between the tribe and the Bureau in terms of the direction to be furnished by the tribe and the supervision which shall be retained by the Bureau of the Federal employee.

(1) Careful thought must be given to the organizational component of the activity being considered for tribal direction. Depending upon whether or not the agreement is in association with a contract, the following should be considered.

a. A tribe contracting for a program or parts of a program which is divisible from the remainder of the program and directing the day-to-day activities of Bureau employees, the agreement shall include all employees whose positions are in the program or portion of the program to be contracted, or in a portion of the program to continue under Bureau operation in connection with a contract for other portions of the program [25 CFR 275.3(a)(3)(ii)(A) and (B)].

b. For those agreements entered into wherein the tribe is not contracting the program or parts of a program, it is recommended that at an Agency Office, a branch-level organization should remain intact; at a school, a distinction might be made between the instructional function and the support function. Any further division of an integral program or service unit would be contrary to effective management because direction to the employee would stem from two sources - the Bureau and the tribe. In addition, arbitrarily dividing related co-workers into two groups would be detrimental to morale and to efficient and effective program operation.

(2) When a tribe assumes direction of only a portion of a program/function, care must be taken that employees under Bureau direction, as well as those under tribal direction, comprehend the unique and distinctive relationship between the two groups. This relationship consists primarily of a continued need for

coordination with other branches and the maintenance of usual organizational contacts.

For detailed procedures and guidelines for Direction of Federal employees - 1834 Act see 44 BIAM 990.4.

2.3 Tribal Employment of a Former Federal Employee. The tribe at any time may offer a Federal employee an opportunity for employment with the tribe. The tribe and the employee must reach a mutual agreement prior to the separation of the Federal employee from the Federal service if the employee is to retain one or any of the Federal benefits provided by Section 105(e) of P.L. 93-638. An agreement must be signed by the authorized tribal representative and the employee to withhold and deposit contributions into the appropriate Civil Service fund. Regulations implementing Section 105 will be issued by the Civil Service Commission.

Subchapter 3. Bureau employees affected by tribal contracting or direction.

3.1 Introduction. Employees and union representatives should be kept advised as far in advance as possible regarding any possible changes that may be made concerning their employment situation.

3.2 Advance Notice for Contracting. When a proposed contract may result in the displacement of Bureau personnel, the application must be submitted at least 120 days before the proposed starting date of the contract in order to comply with Civil Service requirements applicable to reduction-in-force or reassignment of Federal employees.

3.3 Reassignment of Employees. When it is apparent that successful negotiations will be completed with a tribe for directing Bureau employees under the provisions of the 1834 Act, or for contracting a Bureau program, or portion of a program, the employees may request reassignment. Every effort will be made to reassign employees within the same Area Office jurisdiction. Reassignments will be made within the Bureau in accordance with Indian preference guidelines.

3.4 Reduction-in-force. When tribal contracting results in the displacement of Bureau employees, reduction-in-force procedures in 44 BIAM 351 will be followed. Employees who are faced with reduction-in-force will be provided every opportunity possible for placement to vacancies within the Bureau.

A. Departmental Career Placement Assistance Program - Category I. All employees who have received a reduction-in-force notice and desire to be considered for placement within the Department should submit their applications immediately to their Personnel Office for processing under the DCPA program.

3.5 Retaining Federal Employee Benefits under Tribal Employment. The tribes, it is assumed, will offer employment to many Federal employees. P.L. 93-638, Sec. 105(e) provides for former Federal employees who immediately accept employment with a tribe to retain coverage under the Federal Compensation for Work Injuries, Retirement, Health Insurance, and Life Insurance programs provided the tribal organization and the employee agree to elect coverage under these programs. Employee and tribal employer contributions must be paid into the appropriate Civil Service fund.

A. The Bureau will cooperate in releasing Bureau employees to accept employment with the tribe should the opportunity arise. However, employees should be aware that they will no longer retain Federal benefits other than those provided through P.L. 93-638: (1) Federal Retirement, (2) Health Benefits, (3) Life Insurance, and (4) Work Injuries Compensation. These benefits will be provided only when an agreement is reached with the tribe prior to leaving Federal employment. The employee will no longer be protected by the Federal procedures for grievances, appeals, union participation, sick and annual leave, periodic salary increases, etc.

3.6 Reemployment rights. See 44 BIAM 352 (to be issued separately)

Subchapter 4. Direction of Bureau employees - 1834 Act (25 U.S.C. 48)

4.1 Introduction. The use of this Act provides the tribes an opportunity to assume responsibility of their programs, including the direction of the Bureau employees. A well organized and thought-out plan which provides for improved services to the Indian people and maintains a team spirit between the tribes and the Bureau is essential to successful tribal direction of a Bureau program or activity. The ultimate goal through tribal direction may be eventual tribal assumption of activities which directly benefit the tribe. If such is the case, tribal direction could be utilized as an interim arrangement providing for the transition from Bureau to tribal staffing of a program. This subchapter applies to Personnel Management involvement in tribal direction of Bureau employees and the steps necessary to assure that Federal employees retain their status as Federal employees while under the direction of a tribe. Agreements in accordance with the 1834 Act must be approved prior to contracting.

4.2 Definitions in this Subchapter:

A. "Tribal direction of bureau employees" means the Indian tribe is responsible for the planning, coordination, and completion of the daily on-the-job assignments of Bureau employees. The daily assignments are limited to those that fall within the general range of duties prescribed in the employee's Bureau position.

B. "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is Federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

C. "Tribal organization" means any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by a tribal governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

D. "Supervision of Bureau employees" means the Bureau is responsible for the appointment, promotion, reassignment, performance evaluation, pay increase, disciplinary action, or separation of employees. Bureau employees shall retain appropriate Federal benefits and shall be subject to current regulations regarding leave, hours of duty, etc. All personnel actions shall be accomplished in accordance with appropriate Civil Service Commission regulations, and the Department and Bureau Personnel manuals.

4.3 Policy. The Commissioner may delegate to a tribe the authority to direct the day-to-day activities of Bureau personnel under the authority of the 1834 Act. Such agreements can assure greater Indian participation in the direction of Bureau services in Indian communities so as to provide services which are more responsive to the needs and desires of those communities. An agreement may be used to provide interim staffing for a contracted Bureau program until the tribe is able to recruit its own employees. Tribes may authorize tribal organizations to enter into 1834 Act agreements with the Bureau upon their discretion by including such authority in the tribal resolution authorizing the tribal organization to apply for, negotiate and contract for the operation of Bureau programs. All rights and privileges of Bureau employees shall be preserved when authority has been delegated to a tribe or tribal organization to direct the day-to-day activities of employees.

4.4 Authority. Section 9 of the Act of June 30, 1834 (25 U.S.C. 48) and the Solicitor's Opinion M-36803 dated April 3, 1970 provides the guidelines for an Indian tribe to assume day-to-day direction of Bureau employees providing services to them.

A. The Secretary has delegated authority to the Commissioner to permit Indian tribes to direct Bureau employees. This authority may not be redelegated.

B. The authority given to a tribe extends only to directing the daily performance of the work which Bureau employees are employed to do.

4.5 Agreement. An agreement between an Indian tribe and the Bureau for assuming responsibility of a Bureau function must be specific as to:

A. the relationship of the tribe to an authorized tribal organization relative to the agreement, including any limitations and/or authorities granted;

B. the organizational coverage;

(1) if in connection with contracting, identify program(s) or parts of program(s) utilizing the agreement as a method of staffing;

C. the relationship that organizations will have to other components of the remaining organizations in the agency or area;

D. the tribe's and Bureau's agreed to responsibilities relative to the filling of positions in the organization as they become vacant, either:

(1) the positions will be filled by the tribe or tribal organization, or

(2) the positions will be filled by the Bureau, or

(3) a specific period of time for which the Bureau will continue to fill the vacancies in order to allow the tribe or tribal organization the opportunity to assume this responsibility.

E. the identification of any necessary organizational restructuring by the Bureau for the organizational unit covered by the agreement because of program redesign by the tribe.

4.6 Delegation of Authority to a Tribe For Direction of Bureau Employees. An agreement with a tribe under this authority will be implemented:

A. Where the work may be properly vested in the tribe and is in the tribes direct interest;

B. Where the tribe has the desire and the capacity to provide direction but does not have the necessary manpower and skills to do the work under contract, or desires to direct the activities without contracting; and

C. Where it does not involve personnel authorities which must be exercised by a Bureau employee.

4.7 Retention of Bureau Employees. Employees should be notified as soon as possible that an agreement is being negotiated with a tribe to assume responsibility for the direction of a specific program or function. Employees will be given the option of remaining in their current positions to work under the tribal direction or of requesting reassignment within the Bureau. All reassignments will be made in accordance with Indian preference guidelines. If a tribe assumes direction of only a portion of a larger installation, care must be taken that employees under Bureau supervision, as well as those under tribal direction, comprehend the unique and distinctive relationship between the two groups.

4.8 Restrictions on Delegation of Authority to Tribes. The following authorities shall be reserved by the Bureau and not delegated to an Indian tribe:

A. An Indian tribe may not be regarded as standing in the place of a Bureau Superintendent with all the prerogatives, obligations, and authorities of that office.

B. A delegation of direction of employees cannot include authority of the Superintendent to approve the alienation of any rights in trust property; nor may authority over funds in Individual Indian Money Accounts be delegated to the tribe.

C. Such a delegation cannot include authority to expend or encumber appropriated Federal funds.

D. Authority contained in Federal statutes, regulations, or tribal constitutions to review or approve tribal action may not be delegated to the tribe.

E. No authority may be conferred on a tribe to issue, amend, or waive Federal regulations.

F. Authority to exercise supervision of Bureau employees may not be delegated to a tribe.

4.9 Relationship of Tribe to Bureau Employees. Under an agreement for tribal direction of the work of Bureau employees, tribal officials must fully understand their relationship to Bureau employees, including the limits on tribal action, and the rights of the Bureau employees.

A. An Indian tribe may: Furnish day-to-day direction of Bureau employees "within the general range of the duties of their employment."

B. An Indian tribe may not: Exercise any facet of the appointing authority. This means that only Bureau officials will control and be responsible for matters such as pay, promotions, reassignments, appointments, leave, performance evaluation, employee benefits, adverse actions, and dealings with employee organizations.

Tribal recommendations on any of the matters listed above concerning specific employees may be solicited and will be considered. Final decision will be made and acted upon by appropriate Bureau officials.

4.10 Employee's Understanding of the Agreement. Employees should be fully informed of the situation when their organization is proposed for tribal direction under this type of agreement. Due to the possibility of misunderstanding and the employee apprehensions aroused by the prospect of proposed tribal assumption of Bureau functions, items such as the following should be made clear to employees at the earliest possible instance:

A. A delegation of direction of Bureau employees cannot include authority which would abrogate any rights granted to such employees by law, Executive Order, or regulation, including rights relating to employee organization representation and rights of petition and appeal to the Department and Civil Service Commission for redress of grievances.

B. Rating of Bureau employees (performance rating, acceptable level of competence, promotion appraisals, etc.) will be accomplished by Bureau, not tribal, officials. Procedures for these ratings will conform to usual Bureau regulations.

C. An employee may be directed to perform only those functions within the general range of duties prescribed for his employment. Appropriate revisions of position descriptions would be necessary to include a statement that the position is subject to tribal direction.

D. All personnel actions affecting an employee will be determined and accomplished by appropriate Bureau officials. Recommendations from the tribal governing body will be considered, but final decisions will be made by Bureau officials. Opportunities for advancement in the Bureau will continue to be based on established promotion plan procedures.

E. All rights, benefits, and privileges of Bureau employees will be preserved and protected.

Subchapter 5. Contracts for functions normally performed by a Bureau employee.

5.1 Contractible Services. Tribal contracts may include personal services which would normally be performed by Bureau employees, provided the service is divisible from the remainder of the program.

A. Work of a single position may be contracted when the function is one which provides direct services to Indians and does not reduce benefits to Indians served by the non-contracted functions of the program.

5.2 Protection of Bureau Responsibility. No contract may be entered into which would impair the Secretary's ability to discharge his trust responsibility to any Indian tribe or individual, or impair his responsibility and accountability for certain Federal property, records, funds or for administering a Federal personnel program.

5.3 Effects on Employees. Employees occupying positions for which the tribe requests a personal services contract will be reassigned or faced with reduction-in-force unless they are employed by the tribe or tribal organization.

Subchapter 6. Staffing in the event of retrocession, reassumption, assumption or cancellation for cause of tribal program

6.1 Introduction. P.L. 93-638 provides for retrocession by tribes [Sec. 106(d)] and reassumption or assumption by the Bureau [Sec. 109]of programs for which the tribes have assumed direct operational responsibility.

A. Retrocession. A tribe may request retrocession of any contract entered into in accordance with P.L. 93-638, [Sec (106(d)]. The retrocession will become effective upon the date designated by the Bureau but not more than 120 days from the date of the reqest by the tribe. This date may be extended upon mutual agreement between the tribe and the Bureau.

B. Reassumption or Assumption. Under certain conditions, the Bureau may rescind a contract or suspend a grant and reassume operation of a contracted program [25 CFR 271.74] or assume operation of a grant program [25 CFR 272.42].

6.2 Policy. The appropriate Bureau appointing officer shall prepare immediately to employ staff to continue providing specific services to a tribe in the event of retrocession, reassumption, assumption or cancellation for cause of a program administered by a tribe or tribal organization. To restaff programs for contracts entered into on or after December 4, 1975, the Bureau will use any authorized positions and end-of-year employment ceiling placed in reserve at the time of contract execution. For contracts having no reserve, or for operating grant programs, the Bureau will use other means to employ staff, including temporary employment.

6.3 Recruitment. Former Bureau employees who have been granted reemployment rights will be considered along with available Indian candidates when filling positions established as a result of retrocession or reassumption of a contracted program. Expanded recruitment effort will not be necessary unless it is known that local recruitment or the applicant supply file will not provide an adequate supply of qualified candidates.

6.4 Cancellation of Contract for Cause. The Bureau may cancel for cause any contract with a tribal organization when the tribal organization fails to perform within the terms and conditions of the contract. When the Bureau does not have sufficient staff on hand to immediately perform the work, it may, for temporary periods of the shortest duration possible, contract with a contractor that is not a tribal organization. However, in such cases the advice of the tribe(s) will be obtained to determine how they desire the services to be rendered [25 CFR 271.75]. Whenever possible, the provisions of 6.3 above will be followed.

6.5 Temporary Appointment. A former Federal employee who has retained coverage for Federal benefits as provided by P.L. 93-638, [Sec. 105(e)] shall continue coverage for these benefits even though the employee may be given a temporary appointment, provided there is no break in service between the employment with a tribal organization and a temporary appointment in the Bureau.

6.6 Promotion. An appointment of a former Federal employee to a position at a higher grade than previously held in the Federal service must be in accordance with Bureau's Promotion Program.

Subchapter 7. Intergovernmental Personnel Act - Civil Service Commission Personnel and Training Assistance for Indian Tribal Governments

7.1 Introduction. As a result of the Indian Self-Determination and Education Assistance Act, Indian governing bodies performing substantial governmental functions may participate, along with State and local governments, in programs under the Intergovernmental Personnel Act of 1970. The IPA provides for grant assistance, talent sharing, training, technical assistance, and cooperative recruiting and examining.

Illustration 1 lists the Indian governing bodies which the Civil Service Commission has determined eligible for IPA assistance. Additions are made to the list as organizations are approved by the Commission. Any question regarding eligibility of a tribal governing body to participate in the program should be directed to the U.S. Civil Service Commission, Bureau of Intergovernmental Personnel Programs, Office of Faculty Fellows and Personnel Mobility, Washington, D.C. 20418.

7.2 Grants. Indian tribal governments can apply for grant assistance from the U.S. Civil Service Commission in undertaking projects to:

A. Improve their personnel management program.

B. Train their professional, administrative, and technical employees.

Certain nonprofit organizations are also eligible to receive grants to train Indian tribal government employees.

7.3 Talent Sharing - Mobility Assignments. Under the IPA, tribal employees can be temporarily assigned to a Federal agency to perform work of mutual interest. Similarly, a Federal employee can move temporarily to an Indian tribal government where his or her talents can be used. Original assignments cannnot exceed two years. For additional information see FPM 334, 370 DM 334, and 44 BIAM 334, or contact the local Bureau Personnel Office.

7.4 Training. Training for tribal government employees is available through:

A. Training programs developed and administered with IPA grant assistance.

B. Fellowships for graduate level study.

C. Admission to Federal training programs.

Training can involve a wide variety of managerial, supervisory, administrative and technical areas.

7.5 Technical Assistance. The U.S. Civil Service Commission may furnish technical advice on request to tribal governments seeking to improve their systems of personnel administration. Examples of the kinds of assistance available include:

A. Establishment or improvement of tribal government personnel systems, including merit personnel systems.

B. Evaluations of personnel operations.

C. Design of training courses for tribal government employees.

Generally, technical assistance provided by the Commission is reimbursable. However, short term advisory assistance and assistance which consists of the furnishing of available written material may be provided without charge.

7.6 Cooperative Recruiting and Examining. Indian tribal governments may work with the U.S. Civil Service Commission in cooperative efforts to recruit and examine tribal employees on a shared cost basis. Procedures for this kind of cooperative activity must be jointly agreed upon by the tribal government and the Commission Regional Office.

7.7 Additional Information. For additional information regarding the use of the programs listed in paragraphs 7.2, 7.4, 7.5, and 7.6, contacts should be made with the appropriate Regional Civil Service Commission office listed in Illustration 2. The Commission has retained authority to operate these programs.

INDIAN GOVERNING BODIES

Alaska

Kasaan I.R.A. Village

Chilkat Indian Village Klukwan

Metlakatla Indian Community

Atka Village Council

Nikolski Village Council

Perryville Village Council

Tatitlek Village Council

Native Village of Tyonek

Akutan Village Council

Aleknagik Village Council

Belkofsky Village Council

Chignik Lagoon Village Council

Chignik Lake Village Council

Chistochina Village Council

Copper Center Village Council

Egegik Village Council

Eklutna Incorporated

Ekuk Village Council

Ekwok Village Council

English Bay Village Council

False Pass Village Council

Gulkana Village Council

Iliamna Village Council

Ivanof Bay Village Council

Koliganek Village Council

Kokhanok Bay Village Council

Larsen Bay Village Council

Levelock Village Council

Mentasta Lake Village Council

Nelson Lagoon Village Council

Ninilchik Native Association

Pedro Bay Village Council

Pilot Point Village Council

Portage Creek Village Council

Port Graham Village Council

St. George Island Village

Twin Hills Village Council

Ugashik Village Council

Akiachak Village Council

Kwethluk Village Council

Kwigillingok Village Council

Quinhagak Village Council

Tununak Village Council

Atmautluak Village Council

Crooked Creek Village Council

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO
Personnel Management

MAY 4 1977

Memorandum

To: All Area Directors

From: Acting Deputy Commissioner of Indian Affairs

Subject: Intergovernmental Personnel Act

The Bureau of Indian Affairs has had a consistent policy to encourage IPA assignments between Bureau employees and State and local governments, recognized Indian tribes or tribal organizations, and institutions of higher education under the provisions of the Intergovernmental Personnel Act of 1970.

IPA assignments may be made at any time a mutual agreement has been reached between the State or local government, tribe or tribal organization, the Bureau and the employee. Each assignment must be for purposes which would be of mutual benefit to the Bureau and the requesting organization. Thus an assignment may be denied when it is not within the best interest of both parties.

It would be inappropriate to approve IPA assignments for employees in key positions such as Division Directors, Area Directors, Superintendents, or their equivalent. The services of persons employed in these positions are essential to the operation of Bureau programs. Rather than mutual benefit to the agency, a loss of these services would serve as a detriment.

Raymond V. Butler

BUREAU OF INDIAN AFFAIRS
ADP DOCUMENTATION - NARRATIVE

DOCUMENT TYPE			11A	DOCUMENT CONTRO	
☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL	☒ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN			SECTION	PAGE NO.
MAJOR SYSTEM	SYSTEM	SUBSYSTEM		DISTRIBUTE TO	
ADMINISTRATIVE SYSTEMS	CONTRACT/GRANT MANAGEMENT INFORMATION			☐ MANAGEMENT ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS	☐ USE
PROGRAM OR PROCEDURE NO.	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO		☒ NEW	☐ REVISED
		INT-77-005		DATE 3-4-77	
				REPLACES	

(TITLE OF NARRATIVE)

COVER SHEET

SYSTEM PROPOSAL
FOR THE
CONTRACT / GRANT MANAGEMENT INFORMATION SYSTEM

Dated March 4, 1977

Prepared By

Bureau Of Indian Affairs
Division Of ADP Services
Albuquerque, New Mexico

Presented at the Indian Self Determination Act Coordinators Work Shop
Phoenix, Arizona
March 8 thru 10, 1977

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JAN. '78

BUREAU OF INDIAN AFFAIRS
ADP DOCUMENTATION - NARRATIVE

DOCUMENT TYPE

☐ FEASIBILITY STUDY
☐ SYSTEM PROPOSAL
☒ GENERAL SYSTEM DESIGN
☐ DETAIL SYSTEM DESIGN

MAJOR SYSTEM	SYSTEM	SUBSYSTEM
Administrative Systems	Contract/Grant Management Information System	
PROGRAM OR PROCEDURE NO.	**PROGRAM OR PROCEDURE NAME**	**WORK REQUEST NO**
		INT-77-005

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☒ MANAGEMENT ☒ US
☐ ANALYSIS
☐ PROGRAMMING
☐ OPERATIONS
☒ NEW ☐ REVISED
DATE 1/22/77
REPLACES

(TITLE OF NARRATIVE)

Description of the Contract/Grant Management Information System

1. Purpose and Function of the System

   A. The system will maintain current and historical information concerned with the area of contract and grant application, award and accountability for the purpose of management of such contracts and grants at all levels of responsibility.

   B. Principal users of the system will be the area and central office designates whose responsibility is that of contract and grant management.

   C. The goals of the system is to receive, edit and update pertinent data into meaningful computer format and output such data as required by various levels of management to aid them in the management decision making process.

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MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO
Administrative Systems	Contract/Grant Management Information System		☒ MANAGEMENT ☒ US ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	
		INT-77-005	☒ NEW ☐ REVISED DATE 1/22/77 REPLACES

(TITLE OF NARRATIVE)

Description of the Contract/Grant Management Information System

2. System Concepts and Methods

At present two methods of processing are being considered and final determination will be made after careful review concerning cost feasibility, present status of equipment modernization and the desired time frame needed to implement all facets of the system. The two methods of processing are as follows:

A. User data (updates, inquiries, etc.) will be batched processed from field input stations to Albuquerque Data Center via Linolex terminal systems and processed on a daily basis with results returned the following day.

B. User data (updates, inquiries, etc.) will be interactively processed using a data base system at a central location with results being transmitted back to the user as processing is completed. The Linolex terminal systems as well as other communication terminals may be used under this processing method.

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MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO
Administrative Systems	Contract/Grant Management Information System		☒ MANAGEMENT ☒ US ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO.	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☒ NEW ☐ REVISED
		INT-77-005	DATE 1/22/77 REPLACES

(TITLE OF NARRATIVE)

Description of the Contract/Grant Management Information System

3. System Attributes and Restrictions

A. Financial dollar amount balances will be retrieved from the automated Financial Management System by the Contract/Grant System on a daily basis to insure current financial status of such contracts and grants.

B. There will be no change in the way financial transactions are presently being processed concerning contracts and grants but the procedure used to account for each contract and grant will have to standardized and enforced to insure proper representation of financial status.

C. Phase I of this system will include only PL-93-638 contracts and grants with future expansion for all contracts, grants and other fields of procurement, to be accomplished when sufficient control disciplines are incorporated within the Financial Management system to insure total system reconcilliation.

D. The system will provide the user the tool to monitor, track and analyze a PL-93-638 application from initial application to a historical accountability. 3 yrs.

E. Historical data will be maintained and compiled to aid management with problem areas and future decision making.

F. Reporting needs will be designed not only to provide periodic fixed data format reporting but also, on-demand flexible formated reports. This will insure that all data contained in the system can be presented to all of its users in their desired formats and at reasonable time intervals.

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DOCUMENT TYPE			DOCUMENT CONTR
☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL	☒ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN		SECTION / PAGE 1
MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO
Administrative Systems	Contract/Grant Management Information Sytem		☒ MANAGEMENT ☒ ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	
		INT-77-005	☒ NEW ☐ REVISED DATE 3/22/77 REPLACES

NOTE NO.	NARRATIVE
1.	Application Number - System identification number relating to the application of a contract or grant. This identification will be used to enter new records and access existing records. Coding discipline will be established in the detail system design phase.
2.	Applicant Identification - Full name, address and telephone number of applicant.
3.	Tribal Affiliations - Full name(s) of tribes affiliated with applying organization. To be coded using existing coding conventions established in the Financial Management System (FMS). Descriptive titles for codes will be entered into the record via the FMS interface.
4.	Benefiting Tribe(s) - Full name of tribe(s) directly benefiting or receiving services. To be coded using existing coding conventions established in the FMS. Descriptive titles for codes will be entered into the record via the FMS interface.
5.	Date of Submission - Date application submitted to initial designated Bureau office.

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DOCUMENT TYPE			**DOCUMENT CONTROL**
☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL	☐ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN		SECTION PAGE NO 2
MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO ☐ MANAGEMENT ☐ USER ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☐ NEW ☐ REVISED DATE REPLACES

NOTE NO.	NARRATIVE
6.	Office of Submission - The Bureau office of initial application, (Superintendent, Area Director or Commissioner). To be coded using existing FMS conventions. Descriptive titles to be entered via FMS interface.
7.	Indian Population Effected - An estimated number of Indian population who will receive services or benefits from the grant or contract. To be based on available data including tribal rolls.
8.	Application Narrative - Brief descriptive narrative of application intentions (projects, Bureau programs or portions of programs).
9.	Application Type Code - Code designating type of application (contracting for Bureau functions and programs, grants, education contracts under JOM, trust resources, etc.). Applicable codes wil. be established in the detail system design phase.
10.	Initial/Recontracting Code - Code designating if application is an initial application or recontracting application.
11.	Term of Application - Time frame of application (contract term, length of project, etc.) to be coded in years, months and days.

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DOCUMENT TYPE			DOCUMENT CONTROL
☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL	☐ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN		SECTION / PAGE NO. 2
MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO ☐ MANAGEMENT ☐ USER ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☐ NEW ☐ REVISED DATE REPLACES

NOTE NO.	NARRATIVE
12.	Advance Payment - The amount of advance payment required by applicant.
13.	Budget Application - The amount and source of funds for application. These amounts will be associated to the accountability line items covered in the financial tracking information.
*	Notes 14 to 23 cover review and action dates of the Superintendent when applicable.
14.	Notification of Receipt, Scheduled - Date scheduled for notification of receipt to be sent to applicant.
15.	Notification of Receipt, Actual - Date notification of receipt sent to applicant.
16.	Review for Completeness , Scheduled - Date scheduled for the completeness review process of application.
17.	Review for Completeness, Actual - Date of completeness review of application.
18.	Notification of Declination Issues - Date notification sent to applicant that declination issues should be addressed and offer of technical

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DOCUMENT TYPE			DOCUMENT CONTROL	
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MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO ☐ MANAGEMENT ☐ USE ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS	
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☐ NEW ☐ REVISED DATE REPLACES	

NOTE NO.	NARRATIVE
	assistance.
19.	Response Date - Date of applicant response to declination issues.
20.	Response Code - Code designating type of response by applicant (no response, request of additional time, acceptance of technical assistance, etc.).
21.	Forward Date to Area Director, Scheduled - Date scheduled to forward comments and recommendations to the Area Director.
22.	Forward Date to Area Director, Actual - Date comments and recommendations sent to Area Director.
23.	Recommendation Code - Code designating recommendation on application (no recommendations, declination issues, etc.).
*	Notes 24 to 43 cover review and action dates of the Area Director when applicable.
24.	Review and Solicitations, Scheduled - Date scheduled to review and/or solicit Superintendent's recommendations.

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DOCUMENT TYPE

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MAJOR SYSTEM	SYSTEM	SUBSYSTEM
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO

DISTRIBUTION TO
☐ MANAGEMENT ☐
☐ ANALYSIS
☐ PROGRAMMING
☐ OPERATIONS
☐ ☐
DATE
REVISED

NOTE NO	NARRATIVE
25.	Review and Solicitations, Actual - Data of initial review and/or receive
	solicitations from Superintendent(s).
26.	Notification of Receipt, Scheduled - Date scheduled for notification of
	receipt to be sent to applicant.
27.	Notification of Receipt, Actual - Date notification of receipt sent to
	applicant.
28.	Final Review, Scheduled - Date scheduled for final review of application
	and recommendations.
29.	Final Review, Actual - Date of final review of application and
	recommendations.
30.	Recommendations Code - Code designating application recommendations
	(no recommendations, declination, issues, etc.).
31.	Notification of Recommendations - Date notification of recommendations
	sent to applicant (approval, declination, etc.).

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DOCUMENT TYPE
☐ FEASIBILITY STUDY ☐ GENERAL SYSTEM DESIGN
☐ SYSTEM PROPOSAL ☐ DETAIL SYSTEM DESIGN

MAJOR SYSTEM | SYSTEM | SUBSYSTEM
PROGRAM OR PROCEDURE NO | PROGRAM OR PROCEDURE NAME | WORK REQUEST NO

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☐ ANALYSIS
☐ PROGRAMMING
☐ OPERATIONS
☐ NEW ☐ REVISED
DATE
REPLACES

NOTE NO.	NARRATIVE
32.	Award Date, Scheduled - Date scheduled for the awarding of the contract/ grant.
33.	Meeting Date, Scheduled - Date scheduled for meeting when declination issues are addressed to applicant.
34.	Meeting Date, Actual - Date meeting was held to discuss declination issues.
35.	Response Date, Scheduled - Date scheduled for response on declination recommendations by applicant.
36.	Response Date, Actual - Date of receipt of response by applicant to declination recommendations.
37.	Response Code - Code designating type of response by applicant (no response, request for additional time, acceptance of technical assistance)
38.	Final Declination - Date of Area Directors final recommendations to decline application.
39.	Declination Codes - Codes designating specific declination issues.

BUREAU OF INDIAN AFFAIRS
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DOCUMENT TYPE ☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL	☐ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN		DOCUMENT CONTROL SECTION PAGE NO 7
MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO ☐ MANAGEMENT ☐ USER ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☐ NEW ☐ REVISED DATE REPLACES

NOTE NO.	NARRATIVE
40.	Notification of Final Declination, Scheduled - Date scheduled to send final declination decision and applicable material to applicant and Commissioner.
41.	Notification of Final Declination, Actual - Date of notification to applicant and Commissioner of final declination decision and forwarding of all applicable material.
42.	Final Acceptance of Technical Assistance, Scheduled - Date scheduled for final acceptance of technical assistance.
43.	Final Acceptance of Technical Assistance, Actual - Date of acceptance of technical assistance reconstituting the application process at the Area Directors level.
*	Notes 44 to 64 cover review and action dates of the Commissioner when applicable.
44.	Notification of Receipt, Scheduled - Date scheduled for notification of receipt to be sent to applicant.
45.	Notification of Receipt, Actual - Date notification of receipt sent to

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DOCUMENT TYPE			DOCUMENT CO
☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL	☐ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN		SECTION / PAGE NO 8
MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO ☐ MANAGEMENT ☐ USE ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☐ NEW ☐ REVISED DATE REPLACES

NOTE NO.	NARRATIVE
	applicant.
46.	Solicitations of Recommendations, Scheduled - Date scheduled for the solicitation of appropriate Area Director(s) recommendations.
47.	Solicitation of Recommendations, Actual - Date of receipt of the recommendations of the appropriate Area Director(s).
48.	Recommendation Review, Scheduled - Date scheduled for review of recommendations.
49.	Recommendation Review, Actual - Date of review of recommendations.
50.	Recommendation Notification, Scheduled - Date scheduled for notification of recommendations.
51.	Recommendation Code - Code designating application recommendation (recommendations to decline not accepted, approval, plans to issue declination decision, etc.).
52.	Award Date, Scheduled - Date scheduled for the awarding of the contract/grant.

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DOCUMENT TYPE			DOCUMENT CONTROL	
☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL	☐ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN		SECTION	PAGE NO
MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO ☐ MANAGEMENT ☐ USE ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS	
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☐ NEW ☐ REVISED DATE REPLACES	

NOTE NO.	NARRATIVE
53.	Response Date, Scheduled - Date scheduled for applicant response to declination issue.
54.	Response Date, Actual - Date of receipt of applicant response to declination issue.
55.	Response Code - Code designating type of applicant response to declination issue (no response, request for meeting, written rebuttal, etc.).
56.	Meeting Request, Scheduled - Date scheduled for request meeting by applicant.
57.	Meeting Request, Actual - Date of requested meeting by applicant.
58.	Notification of Final Decision, Scheduled - Date scheduled for final notification of applicant decision.
59.	Notification of Final Decision, Actual - Date of final decision notification to applicant.
60.	Declination Codes - Codes designating specific declination issues.

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DOCUMENT TYPE
☐ FEASIBILITY STUDY
☐ SYSTEM PROPOSAL
☐ GENERAL SYSTEM DESIGN
☐ DETAIL SYSTEM DESIGN

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MAJOR SYSTEM:
SYSTEM:
SUBSYSTEM:
PROGRAM OR PROCEDURE NO:
PROGRAM OR PROCEDURE NAME:
WORK REQUEST NO:

DISTRIBUTE TO
☐ MANAGEMENT ☐ USER
☐ ANALYSIS
☐ PROGRAMMING
☐ OPERATIONS

☐ NEW ☐ REVISED
DATE:
REPLACES:

NOTE NO.	NARRATIVE
61.	Final Appeal, Scheduled - Date scheduled for appeal to Board of Indian Appeals.
62.	Final Appeal, Actual - Date applicant appealed decision to Board of Indian Appeals.
63.	Final Offer of Technical Assistance, Scheduled - Date scheduled for offer of technical assistance when no appeal has been made or an appeal has been upheld.
64.	Final Offer of Technical Assistance, Actual - Date technical assistance offered when no appeal has been made or upheld.
65.	Final Offer of Technical Assistance Accepted, Scheduled - Date scheduled for applicant to accept final offer of technical assistance.
66.	Final Offer of Technical Assistance Accepted, Actual - Date applicant accepts technical assistance after final offer of technical assistance.
67.	Final Offer of Technical Assistance Code - Code designating response to final offer of technical assistance (no response, accepted, rejected, etc.)

DP-300.07
JAN. '75

BUREAU OF INDIAN AFFAIRS
ADP DOCUMENTATION - REFERENCE
NOTES

DOCUMENT TYPE
☐ FEASIBILITY STUDY
☐ SYSTEM PROPOSAL
☐ GENERAL SYSTEM DESIGN
☐ DETAIL SYSTEM DESIGN

DOCUMENT CONTROL
SECTION
PAGE NO. 44
DISTRIBUTE TO
☐ MANAGEMENT ☐ USER
☐ ANALYSIS
☐ PROGRAMMING
☐ OPERATIONS
☐ NEW ☐ REVISED
DATE
REPLACES

MAJOR SYSTEM	SYSTEM	SUBSYSTEM
PROGRAM OR PROCEDURE NO	**PROGRAM OR PROCEDURE NAME**	**WORK REQUEST NO**

NOTE NO.	NARRATIVE
*	Notes 68 to 89 cover contract/grant award, financial accountability, status and close-out information.
68.	Award Date - Date contract/grant awarded.
69.	Signature Date - Date contract/grant officially signed.
70.	Effective Date - Date contract/grant is to take effect as shown on contract/grant document.
71.	Expiration Date - Date contract/grant expires.
72.	Method of Award Code - Code designating method of contract award (advertised, negotiated competively, sole source, non-competively, Buy-Indian, Buy-American, etc.).
73.	Type of Contract Code - Code designating type of contract costing (fixed price, cost-plus, cost reimbursement, etc.).
74.	Method of Payment Code - Code designating method of payment to be used (cash advance, letter of credit, direct payment, etc.).

OP-300.07
JAN. 78

BUREAU OF INDIAN AFFAIRS
ADP DOCUMENTATION - REFERENCE NOTES

DOCUMENT TYPE ☐ FEASIBILITY STUDY ☐ SYSTEM PROPOSAL ☐ GENERAL SYSTEM DESIGN ☐ DETAIL SYSTEM DESIGN			DOCUMENT CONTROL SECTION PAGE OF
MAJOR SYSTEM	SYSTEM	SUBSYSTEM	DISTRIBUTE TO ☐ MANAGEMENT ☐ USER ☐ ANALYSIS ☐ PROGRAMMING ☐ OPERATIONS
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO	☐ NEW ☐ REVISED DATE REPLACES

NOTE NO.	NARRATIVE
75.	Contract/Grant Number - Identification number of contract/grant taken from award document.
76.	Contracting Officer Representative Data - Name and telephone number of the responsible contracting officer representatives.
77.	Congressional Codes - Congressional location codes for locations of: substantial performance, awarding office and contractor/grantee.
78.	Financial Accountability - The following data elements will be entered to reflect each financial accountability line item of the contract/grant: Area, agency, location, fiscal year, appropriation, activity, accounting code, element, component, work order, program detail, object class and document reference number. These data elements must correspond to the financial transactions entered into the Financial Management System. For each line item entered above the following dollar amount/balances will be entered through the contract/grant system either from the FMS interface or at the time of award or subsequent amendments: Award amount, amount obligated, obligation balance, budgeted amount at time of initial application, accrued expenditure balances, disbursed balance, advance balance, and letter of credit balance. Each accountability line item will also contain the last FMS transaction date, code

DP-300.07
JAN. '78

BUREAU OF INDIAN AFFAIRS
ADP DOCUMENTATION - REFERENCE NOTES

DOCUMENT TYPE

☐ FEASIBILITY STUDY
☐ SYSTEM PROPOSAL
☐ GENERAL SYSTEM DESIGN
☐ DETAIL SYSTEM DESIGN

MAJOR SYSTEM	SYSTEM	SUBSYSTEM
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO

DOCUMENT CONTROL

SECTION

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DISTRIBUTE TO

☐ MANAGEMENT ☐ USE
☐ ANALYSIS
☐ PROGRAMMING
☐ OPERATIONS

☐ NEW ☐ REVISED

DATE

REPLACES

NOTE NO.	NARRATIVE
	and amount, and amendment code.
79.	Amount of Outside Funding - Dollar amount of outside funding.
80.	Source(s) of Outside Funding - Code(s) designating source of outside funding.
81.	Amendment Code - Code designating amendment action to contract/grant.
82.	Amendment Date - Date of last amendment to contract/grant.
83.	Annual Report Date - Date of required annual report received.
84.	Termination Date - Date contract/grant terminated.
85.	Termination Code - Code designating reason for termination (expired, retroceded, cancelled, reassumption, etc.).
86.	Savings Under Contract - Dollar amount of savings under contract.
87.	Savings Under Contract Code - Code designating use of savings (additional services, carry over, etc.).

DP - 300.07
JAN. '78

BUREAU OF INDIAN AFFAIRS
ADP DOCUMENTATION - REFERENCE NOTES

DOCUMENT TYPE

☐ FEASIBILITY STUDY
☐ SYSTEM PROPOSAL
☐ GENERAL SYSTEM DESIGN
☐ DETAIL SYSTEM DESIGN

DOCUMENT CONTROL

SECTION	PAGE NO.
	14

MAJOR SYSTEM	SYSTEM	SUBSYSTEM
PROGRAM OR PROCEDURE NO	PROGRAM OR PROCEDURE NAME	WORK REQUEST NO

DISTRIBUTE TO
☐ MANAGEMENT ☐
☐ ANALYSIS
☐ PROGRAMMING
☐ OPERATIONS

☐ NEW ☐ REVISED
DATE
REPLACES

NOTE NO.	NARRATIVE
88.	Tribal Evaluation - Limited descriptive narrative of the tribal evaluation of the contract/grant.
89.	Grant Close-Out Accountability - Date all required action is taken for final close-out of a grant.

DP-300.07
JAN. '75

COPY 12A

JAN 26 1976

Honorable John T. Dunlop
Secretary of Department of Labor
3rd Street and Constitution Ave, N.W.
Washington, D.C. 20210

Dear Secretary Dunlop:

As you know, the Indian Self-Determination and Education Assistance Act (P.L. 93-638) became effective on December 4, 1975. One very important provision of that Act calls for Indian preference in training and employment under contracts or grants which benefits Indians. The Act states, in Sec. 7(b):

> Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—
>
> (1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

This section addresses one of the essential components of self-determination. For self-determination to be optimally effective, tribes must have economic self-sufficiency, which requires a substantial reduction in the high unemployment rates that now prevail on most reservations. Effective implementation of Sec. 7(b) could mean thousands of new jobs for Indians in private enterprises on or near reservations. Sec. 7(b) requires that all contractors who receive Federal contracts for the benefit of Indians must give training and employment preference to Indians. While preference to Indians has been permissible in the past, this is the first time it is made a requirement for Federal contractors serving Indians. Also, it is applicable to all Federal Agencies which let contracts for the benefit of Indians and is not just limited to the BIA and IHS. Effective enforcement would mean employment of Indians on all federally funded construction projects on or near reservations, as well as on procurement and service contracts.

In the past, the lack of a a consistent Federal policy of requiring contractors to give hiring preference to Indians resulted in a situation wherein contractors usually brought their own crews to project sites and hired few Indians from the local community. Given the vast amount of construction and procurement contracting being planned for reservations, effective enforcement would insure that Indians receive the many job opportunities that otherwise will likely go to non-Indians. Sec. 7(b) now provides the opportunity for the development of a Government-wide policy, set of regulations, and enforcement system which will insure the comprehensive and enforceable approach to Indian preference that has been lacking in the past.

We feel that the Office of Federal Contracts Compliance in the Department of Labor should have primary responsibility for issuing regulations and overseeing implementation of Indian preference. Sec. 7(b) ties Indian preference into Federal contracts, and the OFCC now has overall responsibility for affirmative action contract compliance within the Federal government. Giving the OFCC primary responsibility would insure that the Indian preference regulations are integrated into the general non-discrimination regulations on contract compliance to prevent conflict between the two related requirements. It would also permit the OFCC to use the enforcement network now in place for carrying out non-discrimination requirements to enforce Indian preference requirements.

Tribal involvement is essential if an enforcement program is to be effective. First, tribal constituions and legal opinions make it clear that tribes have the right to require Indian preference by contractors which the tribes hire or grant permits to; this tribal authority may be used to cover non-Federal contractors as well as Federal ones. Where a tribe is exercising these rights, the Federal enforcement program should be coordinated with that of the tribe. On other reservations there has been substantial confusion about Indian preference and non-discrimination. There is a need to educate tribes about their rights and the nature of the Federal enforcement program to insure smooth implementation of the Federal policy. Lastly, experience has shown that Federal Agencies rarely have the manpower to effectively monitor contract compliance regulations. In many cases the officials who will be responsible for handling Indian preference guidelines will be the same ones who have to handle all the other contract compliance efforts and who are already overworked. Therefore, tribal governments should be involved in the Federal effort to provide a supplementary resource to those of the Federal Agencies.

It is recommended that the BIA, DOL, and ONAP (HEW) set up a coordinating group to insure Indian tribes are knowledgeable about and involved in Indian preference enforcement under Sec. 7(b). This should include a program to provide basic information to tribal leaders as well as technical assistance to tribes that wish to get deeply involved in enforcement of Indian preference — under their own authority as well as that provided under Sec. 7(b).

While the Bureau is recommending that the Office of Federal Contract Compliance have primary responsibility for implementation of Sec. 7(b), the Act itself does not specify which Federal Agency should assume this responsibility. We feel that an Executive Order is probably needed if responsibility is to rest with the OFCC and if other Federal Agencies are to respond positively to regulations issued by that office. An Executive Order is now being prepared by the Bureau which will include the placing of such responsibility with the Department of Labor. In the Executive Order the BIA will reserve the authority to review the OFCC enforcement of Sec. 7(b) - (the same as the Civil Rights Commission now does for other employment discrimination laws) - and to be primarily responsible for assisting tribes to develop their own capacity on Indian preference enforcement.

We would appreciate an opportunity to meet with officials of your Department to discuss the ideas presented in this letter. During a previous meeting with Assistant Secretary DeLury the Indian Self-Determination Act and its implication for other Federal Agencies was discussed. I was assured at that time of his favorable reaction to continuing our brief dialogue. Mr. Robert Gajdys also attended that meeting and has been contacted by members of my staff for his opinion in the matter. His continued participation in discussion will be helpful.

Because of the many questions now being raised by Indian tribal leaders I am suggesting that we meet in the very near future on this matter.

Sincerely yours,

(SGD) Morris Thompson

Commissioner of Indian Affairs

12B

JUN 10 1976

Honorable W. J. Usery
Secretary of Labor
Department of Labor
14th and Constitution Ave., N.W.
Washington, D.C. 20213

Dear Mr. Secretary:

Enclosed is a copy of a letter mailed to your predecessor on January 26, 1976, in which we suggested a meeting between the Bureau and the Department of Labor to discuss Sec. 7(b) of the Indian Self-Determination and Education Assistance Act (P.L. 93-638). We have neither received a reply to that letter nor been contacted to discuss a time and place for a meeting. The need for regulations to implement Sec. 7(b), however, has not diminished.

We are prepared to take whatever action your Department feels is appropriate to complement your efforts in implementing Indian preference in contracting. In order that our efforts are complementary rather than contradictory to yours, we need a status report of the Sec. 7(b) implementation efforts undertaken to date by your Department. If you prefer meeting on the subject rather than preparing a written status report, we are prepared to host such a meeting. Please contact Mr. Harley Frankel, Deputy Commissioner of Indian Affairs, Tel: 343-4174, to establish a time and place.

Sincerely yours,

(SGD) Morris Thompson

Commissioner of Indian Affairs

Enclosure

cc: Surname 101A
Chrony
BCCO
Mailroom

101A:SAdams:db:6-9-76

Exhibit C

Story
6/23

U.S. DEPARTMENT OF LABOR
Office of the Assistant Secretary for Employment Standards
Washington, D.C. 20210

12C

JUN 15 1976

Mr. Morris Thompson
Commissioner of Indian Affairs
U. S. Department of the Interior
Washington, D. C. 20245

Dear Mr. Thompson:

This is in response to your letter to former Secretary Dunlop regarding Indian preference in training and employment as delineated in the Indian Self-Determination and Education Act (P.L. 93-638), particularly as it is explained in Section 7(b). Your letter was referred to this office, and we apologize for this delay in responding to your correspondence.

As you point out in your letter, the need for a consistent Federal policy of requiring contractors to give hiring preference to Indians on or near reservations is absolutely necessary if we are to realize the full impact of Section 7(b). A coordinated Government-wide policy is not only desirable, but essential in our pursuit of equal employment opportunity for Indians.

As I am sure you are aware, within the latitudes of Executive Order 11246, as amended, mandatory preferential hiring of Indians is not permissable; although any Government contractor who has a stated public policy of offering such preferential hiring of Indians is not to be considered in violation of the Order. This aspect of the contractor's hiring policy is purely voluntary and must derive from a "stated public policy".

We are in accord with your recommendation that a coordinating group be convened to discuss the ramifications of Section 7(b) before meaningful commitments can be made. Consequently, Mr. Fred G. Clark, Assistant Secretary of Administration and Management for the Department of Labor, sent a letter to Mr. Hugh E. Witt, Administrator, Federal Procurement

Policy, outlining our position on this matter. Hopefully, some positive activity will be generated as a result of this communication.

A copy of this letter is enclosed for your information.

Sincerely,

John C. Read
Assistant Secretary

Enclosure

APR 16 1976

Mr. Hugh E. Witt
Administrator
Federal Procurement Policy
Executive Office Building
Washington, D.C. 20503

Dear Mr. Witt:

Since the enactment of Public Law 93-638, the "Indian Self-Determination and Education Assistance Act", on January 4, 1975, a significant part of the Act, Section 7(b), has not been administered under consistent policies or centralized direction in the Executive Branch. Section 7(b) states:

> "Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—
>
> (1) preference and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

Because of this lack of direction, conflicting interpretations and apparent confusion, officials of several Federal Departments as well as several Indian Tribes have asked this Department for guidance. They have assumed that Department of Labor's authority under Executive Order 11246, as amended, to provide for affirmative action by Federal contractors for minorities and women, places this Department in a position to provide such guidance for Section 7(b) application.

Dealing as it does with Federal grantees as well as contractors, and with the distribution of ownership as well as employment opportunities, the scope of 7(b) clearly stretches far beyond the reach of the Executive Order program. We thus do not see the Office of Federal Contract Compliance Programs serving as the appropriate locus for this responsibility.

Just last month, Senator Abourezk, Chairman of the Subcommittee on Indian Affairs of the Senate Interior and Insular Affairs Committee, indicated in a letter to the Secretary of Labor that his Subcommittee would be holding oversight hearings this month to determine the extent of implementation of Section 7(b) by the various Federal Departments. A copy of this letter is enclosed. We understand identical letters were sent to all Federal Departments.

To clarify this situation we recommend that your office take the immediate lead in calling a meeting of representatives of the various Federal Departments having interest and concern with this issue. Such a meeting would clarify the past, current and planned directions of the Departments to implement Section 7(b). Hopefully it would also generate suggestions as to the appropriate coordinating mechanism and/or agency to direct and oversee the Federal efforts regarding this Section of the Act; we presume such an assignment would be made in the form of an Executive Order; it is clear to us, above all else, that some clear guidance must be drawn up with which all the Federal agencies can work and which, for example, defines what is meant by such words as "preference" and "to the greatest feasible extent".

We suggest representatives of the Departments of Interior; Health, Education and Welfare; Commerce; Transportation; and Labor be invited to attend this meeting.

Sincerely,

Fred G. Clark
Assistant Secretary for
Administration and Management

Enclosure

cc: Mr. Goldenberg

12D

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

March 30, 1977

Tribal Leader:

Enclosed for your review and comment is a copy of the Department of the Interior's proposed procurement regulations which will implement Sec. 7(b) of the Indian Self-Determination and Education Assistance Act (the "Act") Pub. Law 93-638. These draft regulations are being made available for your comment in accordance with the provisions of Sec. 107(c) of the Act.

Any comments you may have on these regulations should be submitted in writing to the following address on or before April 29, 1977:

Chief, Division of Procurement and Grants
Office of Administrative and Management Policy
Room 5524
18th and C Streets, N.W.
Washington, D.C. 20240

The comments received in response to this letter will be duly considered prior to publication of the proposed regulations for comment in the Federal Register.

Sincerely yours,

Jimmie E Johnson
Chief, Division of Procurement and Grants
Office of Administrative & Management Policy

Enclosure

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C. 20240

Title 41--Public Contracts and Property Management

CHAPTER 41--DEPARTMENT OF THE INTERIOR

PART 14-1--GENERAL

PART 14-7--CONTRACT CLAUSES

: Indian Preference in Employment,
Training, and Subcontracting

AGENCY: Department of the Interior

ACTION: Proposed Rule

SUMMARY: The proposed rule prescribes policies and procedures to be added to the Interior Procurement Regulations to implement Sec. 7(b) of the Indian Self-Determination and Education Assistance Act. The rule proposed requires that preferences be given to Indians in employment, training, and subcontracting under certain types of contracts.

DATES: Comments on the proposed rule must be received in writing on or before

ADDRESS: Division of Procurement and Grants
Office of Administrative and Management Policy
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

FOR FURTHER INFORMATION
CONTACT: William Opdyke (202) 343-5914

SUPPLEMENTARY INFORMATION:

Section 7(b) of the Indian Self-Determination and Education Assistance Act (Sec. 7(b), Public Law 93-638, 88 Stat. 2205, 25 U.S.C. 450e(b)), requires that any contract or subcontract entered into pursuant to certain specified Acts or Acts authorizing contracts with Indian organizations or for the benefit of Indians shall, to the greatest extent feasible, require that preferences and opportunities be given for training and employment of Indians in connection with such contracts and that preference be given in the award of subcontracts to Indian organizations and Indian-owned economic enterprises under such contracts. The proposed rule amends Parts 14-1 and 14-7 of 41 CFR Chapter 14 (Interior Procurement Regulations) by adding implementing regulations.

The Department of the Interior has determined that this document does not contain a major rule requiring preparation of an Inflation Impact Statement under Executive Order 11821 or OMB Circular A-107.

Accordingly, pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, proposed amendments to 41 CFR Parts 14-1 and 14-7 are as follows:

Assistant Secretary of the Interior

Date:____________________

1. The Table of Contents of Part 14-1 is amended by adding a new § 14-1.354 as follows:

Subpart 14-1.3--General Policies

Sec.

*   *   *   *   *

14-1.354 Indian preference in employment, training, and subcontracting opportunities.

2. Subpart 14-1.3 is amended by adding a new § 14-1.354 as follows:

Subpart 14-1.3--General Policies

*   *   *   *   *

§ 14-1.354 Indian preference in employment, training, and subcontracting opportunities.

(a) Statutory requirements. Section 7(b) of the Indian Self-Determination and Education Assistance Act (Sec. 7(b), Pub. Law 93-638, 88 Stat. 2205 (25 U.S.C. 450e(b)) requires that any contract or subcontract entered into pursuant to the Act; the Act of April 16, 1934 (48 Stat. 596, 25 U.S.C. 452), as amended, the Johnson-O'Malley Act; or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible: (1) Preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians; and, (2) Preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. Law 93-262, 88 Stat. 77, 25 U.S.C. 1452).

(b) Applicability. (1) The Indian Preference clause, set forth in § 14-7.5002 of this chapter, shall be included in all solicitations issued and contracts awarded by: (i) the Bureau of Indian Affairs and, (ii) a procuring activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations or is entered into pursuant to an act specifically authorizing contracts for the direct and exclusive benefit of Indians. (2) The Indian Preference Program clause, set forth in § 14-7.5003 of this chapter, should be included in all solicitations issued and contracts awarded by a procuring activity which may exceed $100,000, which contain the clause required by paragraph (b)(1) of this § 14-1.354 and where the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a procuring activity which may not exceed $100,000, but which contain the clause required by paragraph (b)(1) of this § 14-1.354 and which, in the opinion of the procuring activity, offer substantial opportunities for Indian employment, training and subcontracting.

(c) Definitions. For purposes of this § 14-1.354, the following definitions shall apply:

(1) "Indian" means a person who is a member of an Indian Tribe; the contractor shall be responsible for determining whether a person is an Indian.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise' means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(5) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(6) "on or near an Indian reservation" means on a reservation or reservations within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(d) Enforcement. The procuring activity concerned shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of the clauses prescribed by §§ 14-7.5002 and 14-7.5003 of this chapter.

3. The Table of Contents of Part 14-7 is amended by deleting and reserving § 14-7.650-6 and by adding new §§ 14-7.5002 and 14-7.5003 as follows:

Subpart 14-7.6--Fixed Price Construction Contracts

Sec.

* * * * *

14-7.650-6 [Reserved]

* * * * *

Subpart 14-7.50--Special Contract Clauses

* * * * *

14-7.5002 Indian preference.
14-7.5003 Indian preference programs.

4. Subpart 14-7.6 is amended by deleting and reserving § 14-7.650-6 as follows:

Subpart 14-7.6--Fixed Price Construction Contracts

* * * * *

§ 14-7.650 Additional Interior contract clauses.

* * * * *

§ 14-7.650-6 [Reserved]

* * * * *

5. Subpart 14-7.50 is amended by adding new §§ 14-7.5002 and 14-7.5003 as follows:

Subpart 14-7.50--Special Contract Clauses

* * * * *

§ 14-7.5002 Indian preference.

The following clause shall be used as prescribed in § 14-1.354(b)(1) of this chapter:

INDIAN PREFERENCE

(a) The contractor agrees to give preferences to qualified Indians regardless of age, sex, religion, or tribal affiliation over equally qualified non-Indians, for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age, sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient operation of this contract.

(b) In connection with the Indian employment preference requirements of this clause, the contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organization or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the contractor agrees to comply with the provisions of this contract involving utilization of small business, labor surplus area, and minority business firms.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe; the contractor shall be responsible for determining whether a person is an Indian;

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451; and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(f) The contractor agrees to include the provisions of this clause including this paragraph (f) in each subcontract awarded under this contract.

[End of clause]

§ 14-7.5003 Indian preference program.

The following clause shall be used as prescribed in § 14-1.354(b)(2) of this chapter.

INDIAN PREFERENCE PROGRAM

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preferences for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) maintain liaison with the Government on Indian preference matters, (ii) supervise compliance with the provisions of this clause, and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than ten (10) calendar days prior to commencement of work under this contract, post a written notice, in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and

all other pertinent information necessary to advise prospective employees of any other employment requirements. The contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the contractor in filling its employment needs and training opportunities. The contracting officer will advise the contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Give public notice of subcontracting opportunities and request the Tribe(s) on or near whose reservation(s) the work under this contract is to be performed to provide assistance and information on Indian organizations and Indian-owned economic enterprises which may serve as potential sources for subcontracted work. The contracting officer shall advise the contractor of the name, location, and phone number of Tribal officials to contact in regard to requests for Tribal assistance and information.

(5) Maintain written records under this contract which indicate: (a) the names and addresses of all Indians seeking employment for each employment position available under this contract; (b) the number and types of positions filled by (i) Indians and (ii) non-Indians, and the name, address and position of each Indian employed under this contract; (c) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (d) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for all subcontracting opportunities which exist under this contract; and (e) the names and addresses of all Indian organizations and Indian-owned economic enterprises (i) contacted, and (ii) receiving subcontract awards under this contract.

(6) At the conclusion of the contract, the contractor shall submit to the contracting officer for approval a written report which summarizes the contractor's Indian preference program and indicates (a) the number and types of available positions filled by (i) Indians and (ii) non-Indians and (b) the number and dollar amounts of all subcontracts awarded to (i) Indian organizations and Indian-owned economic enterprises and (ii) all other firms.

(7) The contracting officer or his authorized representative shall have access to the written records required by this clause during the period of this contract and up to one year after the completion of this contract.

(b) For purposes of this clause the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) The contractor agrees to insert in any subcontracts hereunder which may exceed $100,000 provisions which conform substantially to the language of this clause and to notify the contracting officer of such subcontracts.

(d) In the event of noncompliance with this clause, the contractor's right to proceed may be terminated in whole or in part by the contracting officer and the work completed in a manner determined by the contracting officer to be in the best interest of the Government.

RONNIE LUPE
CHAIRMAN

Executive Office of the Chairman
WHITE MOUNTAIN APACHE TRIBE

12E

April 28, 1977

Chief, Division of Procurement and Grants
Office of Administrative and Management Policy
Room 5524
18th and C Street, N.W.
Washington, D.C.   20240

RE: Proposed Procurement Regulations
per Section 7 (b), P.L. 93-638

Dear Sir:

In response to your letter of March 30, 1977, (with attached draft of subject regulation), we attach a copy of the proposed procurement regulation annotated with changes that we feel are essential if the intent of the legislation is to be realized.

In cases where the text is to be changed, we have simply ruled through the original text and have inserted immediately above it the desired new wording. We have also added original text where warranted.

There are other, more fundamental considerations that are addressed to the Office of the Secretary in a separate letter. A copy of this letter is also attached. Be advised that the impact of these considerations is reflected in our amendments and additions to the text of the subject regulation.

Sincerely,

Ronnie Lupe, Tribal Chairman
WHITE MOUNTAIN APACHE TRIBE

RL:mjc

Enclosures: (2)

cc: Office, Secretary of the Interior
WMAT Administrative Manager
WMAT Tribal Planner
Superintendent, BIA Fort Apache Agency
SUD, IHS Hospital, Whiteriver

3 xerox copies
file

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED
APR - 4 77 PM
EXECUTIVE SECRETARY
WHITE MTN. APACHE TRIBE
WHITERIVER, ARIZ.

MAR 30 1977

r Mr Hall
Mr Kitcheyan
Mr Booker

Tribal Leader:

Enclosed for your review and comment is a copy of the Department of the Interior's proposed procurement regulations which will implement Sec. 7(b) of the Indian Self-Determination and Education Assistance Act (the "Act") Pub. Law 93-638. These draft regulations are being made available for your comment in accordance with the provisions of Sec. 107(c) of the Act.

Any comments you may have on these regulations should be submitted in writing to the following address on or before April 29, 1977:

Chief, Division of Procurement and Grants
Office of Administrative and Management Policy
Room 5524
18th and C Streets, N.W.
Washington, D.C. 20240

The comments received in response to this letter will be duly considered prior to publication of the proposed regulations for comment in the Federal Register.

Sincerely yours,

James E Johnson
Chief, Division of Procurement & Grants
Office of Administrative & Management Policy

Enclosure

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C. 20240

Title 41--Public Contracts and Property Management

CHAPTER 41--DEPARTMENT OF THE INTERIOR

PART 14-1--GENERAL

PART 14-7--CONTRACT CLAUSES

Indian Preference in Employment, Training, and Subcontracting

AGENCY: Department of the Interior

ACTION: Proposed Rule

SUMMARY: The proposed rule prescribes policies and procedures to be added to the Interior Procurement Regulations to implement Sec. 7(b) of the Indian Self-Determination and Education Assistance Act. The rule proposed requires that preferences be given to Indians in employment, training, and subcontracting under ~~certain types of contracts~~. ALL FEDERAL CONTRACTS FOR PROJECTS WITHIN OR NEAR THE BOUNDARIES OF INDIAN RESERVATIONS.

DATES: Comments on the proposed rule must be received in writing on or before

ADDRESS: Division of Procurement and Grants
Office of Administrative and Management Policy
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: William Opdyke (202) 343-5914

SUPPLEMENTARY INFORMATION:

Section 7(b) of the Indian Self-Determination and Education Assistance Act (Sec. 7(b), Public Law 93-638, 88 Stat. 2205, 25 U.S.C. 450e(b)), requires that any

> contract or subcontract entered into pursuant to certain specified Acts or Acts authorizing contracts with Indian organizations or for the benefit of Indians shall, to the greatest extent feasible, require that preferences and opportunities be given for training and employment of Indians in connection with such contracts and that preference be given in the award of subcontracts to Indian organizations and Indian-owned economic enterprises under such contracts. The proposed rule amends Parts 14-1 and 14-7 of 41 CFR Chapter 14 (Interior Procurement Regulations) by adding implementing regulations.

The Department of the Interior has determined that this document does not contain a major rule requiring preparation of an Inflation Impact Statement under Executive Order 11821 or OMB Circular A-107.

Accordingly, pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, proposed amendments to 41 CFR Parts 14-1 and 14-7 are as follows:

Assistant Secretary of the Interior

Date:____________________

1. The Table of Contents of Part 14-1 is amended by adding a new § 14-1.354 as follows:

Subpart 14-1.3--General Policies

Sec.

* * * * *

14-1.354 Indian preference in employment, training, and subcontracting opportunities.

2. Subpart 14-1.3 is amended by adding a new § 14-1.354 as follows:

Subpart 14-1.3--General Policies

* * * * *

§ 14-1.354 Indian preference in employment, training, and subcontracting opportunities.

(a) Statutory requirements. Section 7(b) of the Indian Self-Determination and Education Assistance Act (Sec. 7(b), Pub. Law 93-638, 88 Stat. 2205 (25 U.S.C. 450e(b)) requires that any contract or subcontract entered into pursuant to the Act; the Act of April 16, 1934 (48 Stat. 596, 25 U.S.C. 452), as amended, the Johnson-O'Malley Act; or any other Act ~~authorizing contracts with Indian organizations or for the benefit of Indians~~ UNDER WHICH FEDERAL PROJECTS MAY BE CONTRACTED ON INDIAN RESERVATIONS shall require that, to the greatest extent feasible: (1) Preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians; and, (2) Preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. Law 93-262, 88 Stat. 77, 25 U.S.C. 1452).

(b) Applicability. (1) The Indian Preference clause, set forth in § 14-7.5002 of this chapter, shall be included in all solicitations issued and contracts awarded by: (i) the Bureau of Indian Affairs and, (ii) a procuring activity other than the Bureau of Indian Affairs when the contract ~~is entered into pursuant to an act specifically authorizing contracts with Indian organizations or is entered into pursuant to an act specifically authorizing contracts for the direct and exclusive benefit of Indians~~ COVERS ANY FEDERAL PROJECT THAT IS WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION(S).. (2) The Indian Preference Program clause, set forth in § 14-7.5003 of this chapter, ~~should~~ SHALL be included in all solicitations issued and contracts awarded by a procuring activity ~~which may exceed $100,000~~, which contain the clause required by paragraph (b)(1) of this § 14-1.354 and where the work under the contract will be performed in whole or in part on or near an Indian reservation(s). ~~The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a procuring activity which may not exceed $100,000, but which contain the clause required by paragraph (b)(1) of this § 14-1.354 and which, in the opinion of the procuring activity, offer substantial opportunities for Indian employment, training and subcontracting~~.

(c) Definitions. For purposes of this § 14-1.354, the following definitions shall apply:.

(1) "Indian" means a person who is a member of an Indian Tribe; the contractor shall be responsible for determining whether a person is an Indian.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(5) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(6) "on or near an Indian reservation" means on a reservation or reservations within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(d) Enforcement. The procuring activity concerned shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of the clauses prescribed by §§ 14-7.5002 and 14-7.5003 of this chapter.

3. The Table of Contents of Part 14-7 is amended by deleting and reserving § 14-7.650-6 and by adding new §§ 14-7.5002 and 14-7.5003 as follows:

Subpart 14-7.6--Fixed Price Construction Contracts

Sec.

* * * * *

14-7.650-6 [Reserved]

* * * * *

Subpart 14-7.50--Special Contract Clauses

* * * * *

14-7.5002 Indian preference.

14-7.5003 Indian preference programs.

4. Subpart 14-7.6 is amended by deleting and reserving § 14-7.650-6 as follows:

Subpart 14-7.6--Fixed Price Construction Contracts

* * * * *

§ 14-7.650 Additional Interior contract clauses.

* * * * *

§ 14-7.650-6 [Reserved]

* * * * *

5. Subpart 14-7.50 is amended by adding new §§ 14-7.5002 and 14-7.5003 as follows:

Subpart 14-7.50--Special Contract Clauses

* * * * *

§ 14-7.5002 Indian preference.

The following clause shall be used as prescribed in § 14-1.354(b)(1) of this chapter:

INDIAN PREFERENCE

(a) The contractor agrees to give preferences to qualified Indians regardless of age, sex, religion, or tribal affiliation over equally qualified non-Indians, for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age, sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient operation of this contract.

(b) In connection with the Indian employment preference requirements of this clause, the contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

INDIAN PREFERENCE

(c) Add: It shall be the contractor's responsibility to provide substantive evidence that (1) a valid screening and evaluation process was followed; and (2) the efficient performance of the contract would be impossible.

(d) If no Indian organization or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the contractor agrees to comply with the provisions of this contract involving utilization of small business, labor surplus area, and minority business firms.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe; the contractor shall be responsible for determining whether a person is an Indian;

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451; and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(f) The contractor agrees to include the provisions of this clause including this paragraph (f) in each subcontract awarded under this contract.

[End of clause]

§ 14-7.5003 Indian preference program.

The following clause shall be used as prescribed in § 14-1.354(b)(?)

of this chapter.

INDIAN PREFERENCE PROGRAM

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preferences for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) maintain liaison with the Government AND THE TRIBE on Indian preference matters, (ii) supervise compliance with the provisions of this clause, and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) ~~ten (10)~~ calendar days prior to commencement of work under this contract, post a written notice, in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the contractors employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and

all other pertinent information necessary to advise prospective employees of any other employment requirements. The contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the contractor in filling its employment needs and training opportunities. The contracting officer will advise the contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Give public notice of subcontracting opportunities and request the Tribe(s) on or near whose reservation(s) the work under this contract is to be performed to provide assistance and information on Indian organizations and Indian-owned economic enterprises which may serve as potential sources for subcontracted work. The contracting officer shall advise the contractor of the name, location, and phone number of Tribal officials to contact in regard to requests for Tribal assistance and information.

(5) Maintain written records under this contract which indicate: (a) the names and addresses of all Indians seeking employment for each employment position available under this contract; (b) the number and types of positions filled by (i) Indians and (ii) non-Indians, and the name, address and position of each Indian employed under this contract; (c) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (d) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for all subcontracting opportunities which exist under this contract; and (e) the names and addresses of all Indian organizations and Indian-owned economic enterprises (i) contacted, and (ii) receiving subcontract awards under this contract.

(6) At the conclusion of the contract, the contractor shall submit to the contracting officer for approval a written report which summarizes the contractor's Indian preference program and indicates (a) the number and types of available positions filled by (i) Indians and (ii) non-Indians and (b) the number and dollar amounts of all subcontracts awarded to (i) Indian organizations and Indian-owned economic enterprises and (ii) all other firms.

(7) The contracting officer or his authorized representative shall have access to the written records required by this clause during the period of this contract and up to one year after the completion of this contract.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) The contractor agrees to insert in any subcontracts hereunder ~~which may exceed $100,000~~ provisions which conform substantially to the language of this clause and to notify the contracting officer of such subcontracts.

(d) In the event of noncompliance with this clause, the contractor's right to proceed may be terminated in whole or in part by the contracting officer and the work completed in a manner determined by the contracting officer to be in the best interest of the Government.

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
Yakima Indian Nation
POST OFFICE BOX 632
TOPPENISH, WASHINGTON [illegible]

GENERAL COUNCIL
TRIBAL COUNCIL

12E

April 27, 1977

Mr. James E. Johnson
Chief, Division of Procurement and Grants
Office of Administrative and Management Policy
Room 5524
18th and C Streets, N. W.
Washington, D. C. 20240

Dear Mr. Johnson:

This is a response to the draft regulations which will implement Section 7 (b) of the Indian Self-Determination and Education Assistance Act. P. L. 93-638 and which were enclosed with your letter of May 30, 1977.

1. The ambiguity in the language of § 7 (b) of P. L. 93-638 is not considered and is changed by the draft regulations.

Section 7 (b) of P. L. 93-638 provides as follows:

> Any contract, subcontract,...pursuant to this Act, the Act of April 6, 1934 (48 Stat. 596), as amended, or any other Act authorizing federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require to the greatest extent feasible.

There are two possible interpretations for this language; it could mean that Indian preference must be given on:

(1) "Any contract, subcontract,...for the benefit of Indians,..." or

(2) "Any contract, subcontract,...pursuant to any other Act...for the benefit of Indians,...

The legislative history does not aid in determining the "correct" interpretation of this language.

The draft regulations propose to use the more narrow interpretation of this language, which is (2) above. This narrow interpretation is contained in § 14-1.354 (b) Applicability which specifies that an Indian Preference clause will be included in solicitation and contracts awarded by:

(i) The Bureau of Indian Affairs and,

(ii) a procuring activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations or is entered into pursuant to an act specifically authorizing contracts for the direct and exclusive benefit of Indians.

Authority to use the more narrow interpretation in the draft regulations is not apparent.

Section 14-1.354 (a) of the draft regulations provides:

> Section 7 (b) of the Indian Self-Determination and Education Assistance Act (Sec. 7 (b), Public Law 93-638, 88 Stat. 2205 (25 U.S.C. 405 e (b))requires that any contract or subcontract entered pursuant to the Act; [sic] the Act of April 16, 1934 (48 Stat. 596, 25 U.S.C. 452), as amended, the Johnson O'Malley Act; [sic] or any other act authorizing contract with Indian organizations or for the benefit of Indians [sic] shall require that,...

The punctuation in this quoted portion of the draft regulations does not conform to the punctuation in 7 (b) of P.L. 93-638. This change in the punctuation results in a more narrow interpretation.

Without legislative history to support a construction of the law, as contained in § 14-1.354 (a), there is no apparent authority to leave § 14-1.354 (a) unchanged.

The courts have held that ambiguous language in acts applying to Indians should be resolved in favor of the Indians. U.S. v. Celestine, 215 U.S. 278; Choate v. Trapp, 224 U.S. 665. If this legal holding is applied to 7 (b) of 93-638, § 14-1.354 (a) must be changed.

2. The draft regulations must provide for possible conflicts between Tribal Indian Preference laws and federal regulations.

The inherent powers of an Indian Tribe may be exercised and provide that an employer or a contractor within the exterior boundaries of an Indian reservation will give preference to Indians.

Then if an Indian Tribe has an Indian Preference law, the regulations implementing § 7 (b) should provide that where there is a conflict between federal regulations and tribal law, the tribal requirements will have priority.

3. The sanctions contained in the draft regulations are inadequate.

§ 14-7.5003 (d) provides for termination in whole or in part by the contracting officer and the work completed in a manner determined by the contracting officer to be in the best interest of the government. "This is inadequate and does not provide for a remedy that will compel compliance.

Sanctions or penalties for contractors who fail to comply with preference requirements should be clear, speedy and expeditious. Enforcement personnel need sufficient staff and resources to enforce compliance.

4. The Indian Preference Program should be a part of all solicitation and contracts covered by 7 (b) of 93-638.

Imposing the Indian Preference Program to solicitations and contracts which exceed $100,000 or imposing such a program at the discretion of the procuring activity if the contract does not exceed $100,000 will not cover the majority of contracts.

The Indian Preference Program should be a part of all solicitations and contracts covered by 7 (b).

5. A single federal agency should be given responsibility to enforce § 7 (b) or the Department of Interior should provide for delegation of enforcement authority to Indian tribes.

Section 14-1.354 (d) provides for periodic review by the concerned procuring activity. Enforcement by various federal agencies will result in confusion and inadequate enforcement.

6. The regulations should specify that the Indian Preference Program will include all employment practices, such as employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Sincerely,

for Willie Yallup
Watson Totus, Chairman
Yakima Tribal Council

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. BOX 128

LAME DEER, MONTANA 59043

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

WOHEHIV - The Morning Star

May 4, 1977

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Muddy

Division of Procurement and Grants
Office of Administrative and Management Policy
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Sirs:

The following comments are on the proposed rule to prescribe policies and procedures to be added to the Interior Procurement Regulations to implement Section 7 (b) of the Indian Self-Determination and Education Assistance Act, (Public Law 93-638).

Section 14-1-354. We feel that this should include contracting as well as sub-contracting, employment, and training opportunities.

The term "to the greatest extent feasible" is a very poor choice. If the term is to be used some guidelines should be worked up. As it stands all a contractor would have to do is to state that any preference in training, employment, contracting or sub-contracting isn't feasible.

The option to not include the Indian Preference Clause in solicitations and contracts under $100,000 should not be so. The Indian Preference Program clause should be included in all contracts.

The contractor should have some guidance in determining whether a person is an Indian.

One of the greatest obstacles to Indian employment is the use of the word "qualified". Who determines who is a qualified worker is very improtant. Many employers use job qualification requirements that tend to exclude potential Indian workers.

Page two.

Under Indian Preference (a) It states: The contractor agrees to give preference to qualified Indians regardless of age, sex, religion, or tribal affiliation over equally qualified non-Indian."

This raises a lot of questions for example, if a non-Indian has a high school dipolma where the Indian doesn't, does this make the non-Indian more qualified? or if the non-Indian has a couple more years experience is he more qualified? The answer may be yes, but the fact remains that the Indian employee is perfectly capable of doing the job.

Under Indian Preference (a) (6) It should include not only the number and types of available positions filled by (I) Indians and (II) non Indians, but should state the length of employment and actual man hours worked by both.

In general the draft regulations seer to be written with the contractor in mind rather than the Indian employee. Indian Preference should apply to all contracts and sub-contracts on or near the reservation. The regulations should not provide loopholes for contractors to get around the Indian Preference Clause.

Would you please send us a copy of your revised rules and regulations on Indian Preference? Thank you.

Sincerely,

Allen Rowland

Allen Rowland, President

AR:sis

12E

PRESS & BLANK
Attorneys at Law
4300 Fordham Road, N.W.
Washington, D.C. 20016
(202) 686-1201

Daniel S. Press
Martin J. Blank

May 10, 1977

Mr. James E. Johnson, Chief
Division of Procurement and Grants
Office of Administrative and Management Policy
18th and C Streets, N.W., Rm. 5524
Washington, D.C. 20204

Re: Proposed Section 7(b) Regulations

Dear Mr. Johnson:

It is commendable that the Department has finally begun to take steps to implement Section 7(b) of the Indian Self-Determination Act. However, the proposed regulations prepared by your office need to be substantially strenghtened and expanded if they are to properly implement the important rights given to Indians by Section 7(b).

A. Introduction

Past efforts to enforce Indian preference requirements have tended to fail for certain common reasons: The specific obligations being imposed on contractors were not spelled out in sufficient detail, so it was difficult to pin down when a contractor was not in compliance. The vagueness of the requirements also left large loopholes for the contractor. The monitoring and enforcement procedures were not sufficiently rigorous, so little actual enforcement activity ever took place. Sanctions were weak or non-existant so contractors had little to fear if they failed to comply with their Indian preference obligations. Insufficient ties were established with manpower programs so Indians were not being trained for the jobs on the contracted project.

The proposed Section 7(b) regulations repeat virtually every one of the mistakes of the past. In addition, many of the definitions and interpretations of statutory language in the proposed regulations take the narrowest approach possible. One would have thought the Department of the Interior would advocate for the broadest interpretation of the statute in order to promote the greatest benefit to Indians. As a result, the proposed regulations, if enacted, would almost insure that Section 7(b) will of little use to Indians and would represent another administrative diminition of strong rights promised to Indians by an Act of Congress.

A number of very basic changes need to be made in the proposed regulations before they are acceptable. Some general improvements are needed in the general section of the regulations and then a number of new provisions must be added to both Section 14-7.5002 and 5003 in order to give them the basic "teeth" they need to be effective. In summary:

1. The definition of covered contracts must be expanded to include all contracts for the benefit of Indians occurring on the reservation, regardless of whether the authorizing Act was one for the benefit of Indians.

2. The threshold amount for contracts that triggers the stronger requirements of Section 14-7.5003 must be reduced from $100,000 to $25,000 or, at the most, $50,000.

3. As now written, Section 14-7.5002, which covers all contracts for $100,000 or less, requires a contractor to do nothing more than "agree" to give preference. This weak and ineffectual section must be substantially strengthened to impose some meaningful requirements on these smaller contracts. At a minimum, these additions should include:

a. A requirement that the contractor post a notice of job openings with the tribe no more than 10 days after contract award.

b. A requirement that the contractor submit monthly reports on the number of Indians working on the contract.

c. A requirement that the contractor obtain a written statement from all signatory unions agreeing to give referral preference to Indians.

d. Some sanctions, since presently, 14-7.5002 fails to authorize the contracting officer to impose any sanctions on non-complying contractors.

4. Section 14-7.5003, which covers the larger contracts, also needs to be substantially strengthened. Needed changes include:

a. Notice to the tribe regarding job openings should be sent 10 days after contract award, rather than 10 days prior to start of work.

b. The contractor should be required to submit monthly reports on the number of Indians employed.

c. The contractor should be required to obtain, prior to start of work, a written statement from all signatory unions, agreeing to give referral preference to Indians.

5. In both 5002 and 5003, the requirement should indicate that a contractor must hire a qualified Indian, whether or not a non-Indian applicant is equally or better qualified. That is, qualification must be a threshold issue, not a comparative issue.

6. Perhaps most importantly, the regulations must provide for coordination between the 7(b) requirements and Indian preference requirements imposed by tribal governments on reservation employers, so the 7(b) regulations do not have the effect of undermining tribal authority.

Each of these recommended changes is discussed in detail below. They represent the minimum changes that need to be made in the regulations. Ideally, the entire set of proposed regulations would be discarded completely and the Department would start from scratch with a different orientation (one directed at maximizing Indian rights) and a different approach, that involved close coordination with tribal governments, that required contractors to establish goals and timetables for the hiring of Indians, and that established an effective monitoring and enforcement system.

B. Detailed Discussion of Comments on Proposed Section 7(b) Regulations

1. Interpretation of the Statute

The language in Section 7(b) is not precise and is open to several interpretations. The broadest interpretation would be that preference must be given on: "Any contract, subcontract, grant, or subgrant...for the benefit of Indians." The narrowest interpretation would be that preference must be given only on "Any contract, subcontract, grant or subgrant pursuant to...any other Act...for the benefit of Indians." Neither a close reading of the section, nor a review of the legislative history, sheds any light on which is the correct interpretation.

Your proposed regulations take the narrowest interpretation. Under them, preference would have to be given only where the Act authorizing the contract or grant was a specific "Indian" Act. Thus, if the Bureau of Reclamation was building a dam or canal on a reservation, it would be under no requirement to give employment preference to Indians, even though some or all of the project is for the benefit of Indians and construction is taking place right on the reservation.

While the language is ambiguous, it is not clear why you selected the narrowest interpretation, since the "aids" to legislative interpretation all argue for a broader interpretation of Section 7(b). One firm principle of law is that ambiguous statutes affecting Indians should be interpreted in the light most favorable to Indians. Secondly, the Department of the Interior, the trustee for Indians, has a legal obligation to push for the broadest possible interpretation. Nor can I see any possible policy reason why a BIA project on a reservation should give preference while a Bureau of Reclamation project should be excluded from this requirement. To the contrary, the broader interpretation would create more employment for Indians, a policy objective the Department should strongly support.

For these reasons, Section 14-1.354(b) (ii) should be changed to reflect the broader interpretation discussed above. At the very least, the regulations should state that any contract let by the Department which takes place on a reservation and is for the benefit of Indians should be required to comply with the preference requirements, regardless of the nature of the authorizing statute. This would simplify application of the policy and would clearly recognize the Department's legal and moral obligations to Indians.

2. The $100,000 limit

Your proposed regulations establish two categories of covered contracts. A contractor with a covered contract in excess of $100,000 must take the affirmative steps spelled out in Section 14-7.5003, in order to meet his Indian preference obligations. A contractor with a covered contract for $100,000 or less must do nothing more than "agree" to give preference to Indians. As discussed later on, the requirements imposed on small contracts must be substantially strengthened. However, as a preliminary matter, the $100,000 figure is much too high and should be reduced to no more than $50,000.

I can understand your desire to avoid imposing undue burdens on small contractors, but you have shown too much concern for the contractors and too little for the Indian beneficiaries. A contracts of over $50,000 is sufficiently large to justify imposition of the Section 14-7.5003 requirements. A contract of that size creates a significant number of jobs, particularly since a large number of the contracts on reservations fall into this $50 - $100,000 category. The Office of Federal Contract Compliance Programs requires detailed affirmative action steps on all contracts of over $50,000 and it seems that the Department of the Interior should set the same threshold figure for requiring affirmative action steps to promote Indian preference. A threshold figure for Section 7(b) that is twice as high as that now used by OFCCP to implement Executive Order 11246 is totally unjustified and puts Indians into a second-class status. Therefore, the $100,000 figure should be changed to $50,000.

3. The Specific Requirements Imposed on Contractors by 14-7.5002 and 5003.

Sections 14-7.5002 and 14-7.5003 set out the requirements imposed on small and large contractors respectively. Section 14-7.5002 requires contractors on the small contracts to do nothing more than "agree" to give preference.

This kind of weak and vague requirement has, over the years, proven to accomplish nothing but to develop false hopes within the Indian community. It provides no "teeth" and no way to measure the contractor's compliance with his Indian preference obligations. Section 14.5003 sets out more specific requirements for contracts over the threshold amount. This section is also too weak and incomplete and needs to be substantially strengthened.

a. Both sections require a contractor to give preference to an Indian over an "equally qualified" non-Indian. It is extremely difficult to prove that one person is better qualified than another, and contractors seeking to hire a non-Indian can always find a reason why their non-Indian applicant is better qualified than the Indian applicant. To be effective, the regulations must require that once it is shown that the Indian is qualified, it does not matter whether the non-Indian is more or less qualified. That is, once the Indian is shown to meet whatever threshold qualification criteria are set, he or she must be hired, regardless of the qualifications of the competition Since the BIA's own regulations for Indian preference on employment within the BIA apply the threshold approach, it is not clear why the proposed 7(b) regulations are applying the most restrictive definition of qualified. Therefore, the respective provisions of Sections 14-7.5002 and 5003 should both be changed to read as follows:

> "The contractor agrees to give preference to qualified Indians. Once an Indian has been found to be qualified for the specific job, he or she shall be hired, whether or not a non-Indian applicant may be equally or better qualified."

b. Unions. Union non-compliance has been one of the biggest obstacles to the successful implementation of Indian preference requirements. The proposed regulations fail to address this issue at all. Both Section 14-7.5002 and 5003 must be changed to require a covered contractor to obtain a written statement from all of its unions, in which the union agrees to give preference to Indians and specifically indicates that it will give absolute referral preference to Indians over union members who are not Indian, whether or not the Indians are union members. This kind of requirement is not in violation of any labor law and must be included if Indians are to get hired on unionized contracts covered by Section 7(b).

c. Notice to the Tribe. Section 14-7.5002 does not require the contractor to give any notice to the tribe on upcoming jobs on 7(b) covered contracts. Section 14-7.5003 requires the contractor to post job openings "no less than 10 days prior to commencement of work." One of the hopes for Section 7(b) is that tribal and other manpower programs will focus their resources on training Indians for jobs being opened up through Section 7(b) rights. If the tribe is going to be able to use the information to develope and locate skilled workers to take advantage of these openings, it is going to need much more than 10 days advance notice. Contractors generally know their employment needs at the time they sign the contract with the Federal agency, so requiring them to provide notice to the tribe at an earlier date imposes almost no burden on them. Therefore, Section 14-7.5003 should be changed to require that notice be given to the tribe "no more than 10 days after the contract is signed." Section 14-7.5002, which now has no provision for notice to the tribe, should be expanded to include the same requirement as recommended above: notice no more than 10 days after the contract is signed. This requirement does not impose an undue burden on a small contract, but the information is vital to the tribe.

d. Sanctions. For an employment rights program to be effect, a contractor must know that strong sanctions will be quickly imposed if he fails to comply with his obligations. The proposed regulations do not do this. Section 14-7.5002 has no provision regarding sanctions. 14-7.5003 has a very weak provision, which says that the contracting office "may" impose sanctions in the event of non-compliance and then fails to provide the contracting officer with the broad range of sanctions he or she will be need to make the program work. Therefore, 14-7.5003(d) should be changed to read as follows:

> "In the event of non-compliance with this clause, the contracting officer shall impose sanctions on the contractor. The sanctions imposed shall include one or more of the following: to postpone progress payments, to suspend the project, to terminate the project, and to require the contractor to provide back pay or other appropriate relief to Indians who were damaged by the contractor's failure to comply with these requirements."

The absence of any provision regarding sanctions in Section 14-7.5002 is a clear indication to a contractor that he can ignore the requirements with impunity. The same provision on sanctions recommended for 5003 should be included in 5002.

e. Complaint Procedure. The proposed regulations have no provision to allow a tribe or an individual aggrieved Indian to file a compalint regarding a contractor's non-compliance with the 7(b) provision. A formal complaint procedure for third party beneficiaries is an essential part of an effective enforcement system, since it surfaces problems a busy contracting officer may not see. Therefore, Section 5002 and 5003 should provide for a formal complaint procedure, which requires the contracting officer to take a specific set of actions on every complaint alledging non-compliance filed with him.

f. Reporting. The proposed regulations do not require a contractor to submit regular reports on the number of Indians he has hired. Without this information, a contracting officer cannot monitor a contractor's compliance.

With it, he or she can quickly determine which contractors have few Indians employed and can then focus his or her enforcement attentions on those specific contractors. It is not a great burden, on large or small contracts, to require the contractor to submit monthly reports on the number of Indians hired, fired, etc. A reporting requirement should be contained in both 5002 and 5003.

4. Coordination with Tribal Programs. Perhaps the most serious ommission in the proposed regulations is their failure to address coordination between Interior's Section 7(b) requirements and Indian preference requirements imposed on employers by tribes. Tribes are beginning to use their sovereign powers to impose preference requirements on all employers working on their reservations. As a result, a contractor could be covered by two different sets of Indian preference requirements--those imposed by the tribe and those imposed by Section 7(b).

This opens up the possibility for conflict and confusion. Does a contractor have to comply with both sets of regulations? What if the tribal requirements are stronger? Under normal Federal law, the Federal 7(b) requirements would take precedence and a contractor would not have to comply with the tribal requirements. This would put the Department of the Interior in the position of undermining tribal authority. If the tribe's requirements were stronger, this would allow 7(b) covered contractors to get away with less rigorous Indian preference obligations than those being imposed on all other employers on the reservation. Tribes had a similar problem regarding the relationship between tribally imposed preference requirements and the equal employment requirements imposed by Federal Contract Compliance Program. That conflict created confusion for over four years until resolved by OFCCP regulations which stated that tribal laws would take precedence. (See attachment.)

This problem should not be allowed to repeat itself on 7(b). Given the inadequacy of the proposed regulations, they should, at the very least, make sure they do not interfere with tribal enforcement of strong tribally-imposed preference requirements. A provision should be added to the proposed regulations providing that:

"a. Where a tribe had imposed its own Indian preference requirements, a contractor covered by Section 7(b) is not excused from complying with the tribal requirements, because of his obligation to comply with Section 7(b).

b. Where the tribal requirements and Section 7(b) requirements are inconsistant or in conflict, the contractor shall comply with the tribal requirements, in recognition of the policy of Indian Self-Determination.

c. The contracting officer shall meet with the tribal officials responsible for implementing the tribe's employment rights program and ways to coordinate their efforts in order to promote maximum benefit for

Indians. The contracting officer shall have authority to waive or otherwise modify any of the 7(b) regulations in order to promote their coordination with tribally-imposed preference requirements that cover a contractor also covered by Section 7(b)."

Conclusion

The proposed regulations read as if they were written to minimize the rights provided to Indians by Section 7(b) and to reduce the obligations being imposed on contractors. My understanding is that the Department of the Interior is supposed to serve as an advocate for Indians, which means it should be seeking the strongest regulations permitted. Since the opposite orientation pervades the proposed regulations, they need to be substantially rewritten, as indicated above, in order to provide the rights promised by Section 7 (b) and to provide the necessary legal mechanisms for enforcing those rights.

Sincerely yours,

Daniel S. Press

Daniel S. Press

DSP/ik
enclosure

contracts with several different Federal Departments. To avoid the problem of having two or three different compliance offices monitoring the same employer, OFCCP has assigned each compliance office monitoring responsibilities over particular industries. For example, HEW has responsibilities for monitoring all educational institutions that receive Federal contracts. So HEW will monitor a school's contract compliance even if the contract to the school was let by the Department of Agriculture. Because of this complex system, it is sometimes difficult to determine the appropriate contract compliance office if a TERO wants to file a complaint against a particular contractor. In these situations, the TERO should file the complaint with the Office of Federal Contract Compliance Programs' Regional Office, which will refer the complaint to the appropriate contract compliance office. (A list of OFCCP regional offices is contained in Appendix A.)

2. The Relationship Between the Contract Compliance Program and Indian Preference Programs

A Federal contractor can find itself covered by two conflicting sets of regulations. A Federal contractor working on a reservation where the tribe has implemented an Indian preference program would be covered by the tribe's preference requirements as well as by the OFCCP requirements. A Federal contractor working on a contract for the benefit of Indians is covered by the Section 7(b) Indian preference requirement as well and by the FCCP requirements. The tribal or Section 7(b) preference programs require the contractor to give preference to Indians. The FCCP requires the contractor to make special efforts on behalf of all minorities, all women, all handicapped, and all Vietnam veterans, but not to favor one group over the other or to give preference to any of them.

For several years there were disagreements between tribes and OFCCP over whose requirements had priority when a reservation employer was covered by both FCCP and tribal preference requirements. Indians get some benefit from FCCP, but they have to share those benefits with other minorities, and non-Indian women, veterans, and handicapped, whereas the Indian preference requirements are solely for the benefit of Indians and are more effective since absolute preference is much stronger than "affirmative action steps." Tribes have argued that tribal preference requirements should take priority over FCCP provisions. Federal contractors have argued that they did not have to comply with tribal preference requirements, because they conflicted with FCCP requirements. (They often made this argument simply to avoid complying with the tribal requirements, which were much more rigorous than the FCCP.) Since many reservation employers are Federal contractors, this conflict threatened to undercut tribal preference programs.

The issue was finally resolved in January, 1977 when OFCCP issued regulation which said, in effect, that the tribal preference program had priority and that Federal contractors covered by tribal regulations could not use the Federal contract compliance program as an excuse for ignoring the tribal preference requirements. The new regulations state:

> "Work on or near Indian reservations. It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter." 1/

1/ 41C.F.R. 60-1.5(a)(6)

APPLICABILITY OF P.L. 93-638 TO OFF-RESERVATION PROGRAMS OR FACILITIES

A. Purpose. The purpose of this paper is to discuss the problems involved in contracting off-reservation programs or facilities under the P.L. 93-638 regulations, to offer alternative solutions, and to solicit other recommendations. The paper is intended for use in recommending changes to the regulations implementing P.L. 93-638 (25 CFR Part 271) to resolve the problems.

B. Problems under current regulations. Section 271.18(a) of 25 CFR requires that a tribal organization obtain an authorizing resolution from each tribal governing body before applying for a contract to serve more than one tribe. When applying for a contract to operate a facility which serves all or a large number of tribes, such as Haskell Indian Junior College, it is impossible to obtain an authorizing resolution from each tribal governing body. In effect, this prevents a tribal organization from obtaining such a contract.

C. Alternatives. The following are alternatives to enable a tribal organization to obtain a contract to operate a program or facility serving all or many tribes.

1. Consent of majority of tribes to be served. In a September 2, 1975 letter to the Commissioner, the Inter-Tribal Council, Inc. of Miami, Oklahoma expressed concern over the difficulty of obtaining the needed resolutions to apply for a contract to serve more than one tribe. The Council recommended that an inter-tribal organization obtaining resolutions from a majority of the tribes involved should be eligible to apply for a contract under P.L. 93-638.

This recommendation has serious drawbacks in the case of initial contracts. It would allow an inter-tribal organization or a tribal organization initially recognized by only one tribe to force contracting on some tribes which may be reluctant or opposed to the contract by securing resolutions from the majority of the tribes to be served. It would also permit a majority of tribes which do not represent a majority of the Indian people being served to determine that a contract operation would be established. This would be contrary to the spirit of "self-determination" since the minority tribes would have no part in making the decision but would have to abide by it. It also contradicts 25 CFR 271.4(d) which states, in part, that "* * * it is the policy of the Bureau to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decision of an Indian tribe not to request contracts."

2. Redefine "Service Population Area" for the program or facility. It has been recommended that the service population area for a program or facility be more clearly defined and then used to determine what tribe(s) is (are) regarded as the benefitting tribe(s) which must consent

in a contract. Following are two variations of this recommendation.

a. The Bureau would determine the service population area, specifically defining the tribes served by the program or at the installation. Any requests to contract would require resolutions from all tribes in the service population area. The major drawbacks to this alternative are:

1) The manner in which the service population is defined might be subjective.

2) Tribes previously included in the service population might not need or want to be a part of the service population as defined by the Bureau, or vice versa.

3) This alternative does not allow for changing service populations.

b. The Bureau would define the 'Service Population Area' to be flexible and floating, based on the majority of enrollment or use of facility or program by members of a tribe. Any requests to contract would require resolutions from all tribes representing a majority of the current enrollment or use of the facility or program. This alternative would ensure a consensus of opinion for contracting. More importantly, the service population defined would represent the tribes currently served by the program or the facility. In this case, there would be no subjective definition of service population area. Tribes representing the minority could request the Bureau to serve them in another facility or in another manner (e.g., use their share of the funds at other institutions). The major drawbacks to this alternative are:

1) This alternative places the Bureau in the position of defining services for individuals rather than in the context of services to tribes as separate entities having a government-to-government relationship with the Federal Government.

2) Tribes representing the minority lose their option not to contract and are placed in the position of either utilizing the services of the contract or requesting the Bureau to provide services to their tribe at another installation or in another manner.

3. Contract under other authority. It has also been recommended that the operation of an off-reservation program or facility serving more than one tribe should be contracted under the Federal Procurement Regulations (41 CFR 1) as supplemented by the Interior Procurement Regulations (41 CFR 14) and the Bureau of Indian Affairs Procurement Regulations (41 CFR 14H), not under the P.L. 93-638 regulations.

The House report (No. 93-1600) on the bill (S.1017) which became P.L. 93-638, speaks in terms of contracting for the operation of reservation programs and does not make provisions for contracting for the operation of off-reservation programs or facilities. Page 15 of the House report states:

> "Section 102(a) directs the Secretary of the Interior to enter into contracts, upon the request of Indian tribes, with tribal organizations to perform the programs and services carried out by the Bureau of Indian Affairs *on Indian reservations* under its various authorities." (Underlining added for emphasis)

The contracting of off-reservation programs or facilities does not seem to have been addressed by Congress in drafting P.L. 93-638. At least based upon the language in the House report, it appears that Congress may have intended P.L. 93-638 to apply only to reservation programs. Therefore, it may be more appropriate and feasible to contract the operation of an off-reservation program or facility under the Federal Procurement Regulations whenever the Bureau determines that such a contract can best serve Indians. This would require changes to the regulations in 25 CFR Part 271, probably a revision to §271.1(a).

The drawbacks to this approach are that the Federal Procurement Regulations as supplemented by the Department of Interior and the Bureau were not developed to handle contracts of this nature. More importantly, the Bureau is concerned about setting set a precedent of removing a certain type of program contract from the scope of the Indian Self-Determination and Education Assistance Act regulations since it is the Bureau's policy to apply the principle of Indian self-determination to Bureau activities to the greatest extent possible.

4. *Legislative change*. A fourth alternative is to ask Congress for an amendment to Section 4(c) of the Indian Self-Determination and Education Assistance Act to resolve the situation.

D. *Other recommendations*. The Bureau welcomes other recommendations for a solution to this problem as well as comments on the alternatives given in paragraph C.

INT: 1047-78

16 B

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

DEC 8 1976

To All Tribal Leaders:

Enclosed for your review are the following documents concerning revisions to the regulations which implement the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.):

1. The draft of a proposed rulemaking document to make certain changes to 25 CFR Parts 271, 274, 275 and 276. The reason for each change is given in the preamble of the document. No changes were suggested to 25 CFR Part 272, "Grants Under Indian Self-Determination Act." Changes to 25 CFR Parts 273 and 277 will be handled in two separate documents to be issued later. Some of the proposed changes to 25 CFR Part 273, "Education Contracts Under Johnson-O'Malley Act," involve budget matters which must be coordinated with the Office of Management and Budget and Congress before the proposed changes can be sent out for comment. Changes are needed to 25 CFR Part 277, "School Construction Contracts for Public Schools," to reflect a memorandum of agreement between the Bureau and the U.S. Office of Education on their working relationship, functions and responsibilities concerning public school construction. Changes to 25 CFR Parts 273 and 277 are being developed but will be issued later to avoid further delay of the rest of the proposed revisions.

2. The draft of a proposed rulemaking document to make certain changes to 41 CFR Part 14H-70. The reason for each change is given in the preamble of the document.

3. A paper on the problems involved in contracting off-reservation programs or facilities under the Indian Self-Determination and Education Assistance Act regulations (25 CFR Part 271). The paper outlines the problem, discusses several alternatives, and requests any other recommendations for a possible solution as well as comments on the alternatives given.

The changes proposed in the enclosed documents are the result of comments received in response to:

1. Our August 6, 1976, letter to you requesting comments and suggestions for changes. Central and Area Directors and Superintendents were sent copies of the letter and were also asked to submit comments.

2. A September 28, 1976, memorandum to Central Office Directors, the Indian Self-Determination Staff, the Contracting and Grants Administration Staff, and the Solicitor's Office requesting comments on a draft of the proposed changes.

Copies of the enclosed proposed rulemaking documents and paper have also been sent to the Area Directors for their review and comments. We have asked that they assist you in developing comments on the enclosed documents if you wish.

All comments should be sent to the Division of Management Research and Evaluation (Code 850), Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, no later than February 18, 1977. You may also submit comments on changes you feel are needed in addition to those included in the enclosed documents. However, for each additional change suggested, please give the reasons for the change so it can be properly considered.

All comments received by the February 18 deadline will be reviewed and analyzed. The proposed rulemaking documents will be revised accordingly and then published in the FEDERAL REGISTER. Interested persons will be given another 30 days in which to comment on the proposed regulations. The proposed regulations will be revised as needed in response to the comments received. Final rulemaking documents will then be prepared and published in the FEDERAL REGISTER. The revised regulations will become effective 30 days after the date the final rulemaking documents are published in the FEDERAL REGISTER.

Sincerely yours,

Raymond V. Butler

Acting Deputy Commissioner of Indian Affairs

Enclosures

16C

PAPER ON "APPLICABILITY OF P.L. 93-638 TO OFF-RESERVATION PROGRAMS OR FACILITIES"

Sacramento Area Office - "The intent of P.L. 93-638 will be defeated if contracting of school operations is accomplished by inter-tribal council organizations without an authorizing resolution from each tribe to be served by the contract. Inter-tribal organizations are not always supported by, or supportive of, tribal government. The initiative to decide whether or not to contract off-reservation programs or facilities should remain with all the tribes served by the program."

Billings Area Office - "The alternatives presented in paragraph C(3); to contract under an authority other than P.L. 93-638, is the only viable alternative presented. The drawbacks presented are not supportable as is evidenced by the following rationale:

"1. Federal Procurement Regulations (FPR) and Department of the Interior Supplements thereto are satisfactory and complete for contracts of this nature. Operational contracts such as these are commonly issued by other Agencies. Relief from any particular FPR which may inhibit the proper operation of Bureau programs can be obtained through established procedures.

"2. The Bureau's policy '...to apply the principle of Indian Self Determinaiton to Bureau activities to the greatest extent possible.' would not be jeopardized by using another authority for contracting. Conversely, attempts to apply the Self Determination principle is the root of the problem. Anything short of 100% approval of all tribes affected is not Self Determination; at what point does one group of tribes gain the right to contract through Self Determinaiton and a smaller group of tribes lo~~o~~se its self determination rights to prohibit the contract? Because of that unresolvable conflict between rights, the P.L. 93-638 right to contract cannot be given and was not, we believe and as pointed out by the paper, intended by Congress.

"A legislative change to the Self Determinaiton and Education Act is not plausible as such action cannot resolve the conflict of rights."

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be a new resolution and a new request from the Indian tribe(s) that will receive services or benefits under the contract.

[40 FR 51286, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976]

§271.76 Bureau operation of retroceded, reassumed or cancelled for cause contracts.

(a) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed or cancelled for cause not less than the same quantity and quality of service that would have been provided at the level intended by the contract or operated previously by the Bureau.

(b) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed, or cancelled for cause not less than the same quantity and quality of permanent and temporary personnel that meet the U.S. Civil Service qualifications that would have been provided at the level intended by the contract or previously operated by the Bureau. The procedures in §271.77 will be followed to obtain personnel to operate programs or parts of programs previously under contract with a tribal organization but returned for operation by the Bureau because the contract was either retroceded, reassumed or cancelled for cause.

(c) This section shall apply to all contracts for the operation of Bureau programs or parts of programs in effect at the time of the effective date of these regulations entered into under the authority of the Buy Indian Act (25 U.S.C. 47), and any contracts under this Part.

(d) Actions under this section shall not cause a reduction in the quality and quantity of services to tribe(s) or Indians not served by contracts which are retroceded, reassumed or cancelled for cause.

§271.77 Authorized position and end-of-year employment ceiling reserve for Bureau operation of retroceded, reassumed or cancelled contracts.

(a) When authorized permanent and other positions and permanent and other end-of-year employment ceiling are not required for the operation of all or parts of a Bureau program because the program or parts of a program are under contract with a tribal organization under this Part, the positions and ceilings shall be reserved. The positions and ceiling reserved shall be available only for the same program or parts of a program at the same locations if the Bureau must operate the program or parts of a program because a tribe has retroceded the contract or because the Bureau has reassumed or cancelled the contract for cause.

(b) The Bureau shall establish a position and ceiling reserve for all contracts for the operation of all or parts of Bureau programs initially entered into on or after the effective date of these regulations.

Subpart G—Hearings and Appeals

§271.81 Hearings.

Hearings required by §271.74 shall be conducted as follows:

(a) The tribal organization and the Indian tribe(s) shall be notified, in writing, of the hearing. The notice shall give the date, time, place, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) Within 30 days of the hearing, the Commissioner or Area Director as appropriate shall issue a written decision on the issues considered during the hearing.

§271.82 Appeals from decision or action by Area Director.

A tribal organization (unless restricted by the tribal resolution under §271.18(c)(2) or subsequent resolutions) or tribal governing body may appeal any decision made or action taken by an Area Director under this Part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

✓ §271.83 Appeals from decision or action by Commissioner.

(a) A tribal organization (unless restricted by the tribal resolution under §271.18(c)(2) or subsequent resolutions) or tribal governing body may appeal the Commissioner's decision to decline to contract or to decline to amend a contract under §§271.25 or 271.64 to the Director, Office of Hearings and Appeals, Department of the Interior, as provided in Subpart G of 43 CFR Part 4.

(b) A tribal organization (unless restricted by the tribal resolution under §271.18(c)(2) or subsequent resolutions) or tribal governing body may appeal any other decision made, action taken, or action not taken within the time limits required by this Part, by the Commissioner if authorized and as provided in Part 2 of this chapter. A decision by the Commissioner concerning funding levels for a program or part of a program to be contracted is considered to be an exercise of the Commisten (10) days. When a party who filed a notice of intention to file a brief or written argument fails to file a timely brief or argument the Board may proceed to dispose of the appeal pursuant to § 4.666.

(b) Applicant's brief or written argument shall set forth in detail the objections presented in his application, the reasons therefor and the relief requested. The brief may contain tests, reports, evaluations and other matter which applicant deems pertinent.

(c) Three (3) copies of each brief shall be filed with the Board. Copies of briefs shall be legibly typewritten, printed or duplicated.

§ 4.666 Failure to present written argument.

If a brief or other written argument is not received within the prescribed period, or the expiration of any authorized extension, the Board shall decide the appeal on the basis of the record before it.

Subpart G—Special Rules Applicable to Other Appeals and Hearings

AUTHORITY: The provisions of this Subpart G issued also under 5 U.S.C. sec. 301.

§ 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct his appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official.

[36 F.R. 7186, Apr. 15, 1971; 36 F.R. 7588, Apr. 22, 1971]

§ 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative, in the Office of the Director, within 30 days from the date of mailing of the decision from which the appeal is taken. The notice shall contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied upon and the relief sought. The appellant shall mail a copy of the notice of appeal, any accompanying statement of reasons therefor, and any written arguments or briefs, to each party to the proceedings or whose rights are involved in the case, and to the Departmental official whose action or decision is being appealed. The notice of appeal shall contain a certificate setting forth the names of the parties served, their addresses, and the dates of mailing.

§ 4.702 Transmittal of appeal file.

Within 10 days after receipt of a copy of the notice of appeal, the Departmental official whose action or decision is being appealed shall transmit to the Office of the Director the entire official file in the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.

§ 4.703 Pleadings.

If the parties wish to file briefs, they must comply with the following requirements: Appellant shall have 30 days from the date of filing of his notice of appeal within which to file an opening brief, and the opposing parties shall have 30 days from the date of receipt of appellant's brief in which to file an answering brief. Additional or rebuttal briefs may be filed upon permission first obtained from the Director or the Ad Hoc Appeals Board appointed by him to consider and decide the particular appeal. Copies of all briefs shall be served upon all other parties or their attorneys of record or other qualified representatives, and a certificate to that effect shall be filed with said brief.

[36 F.R. 7186, Apr. 15, 1971; 36 F.R. 7588, Apr. 22, 1971]

§ 4.704 Decisions on appeals.

The Director, or an Ad Hoc Appeals Board appointed by the Director to consider and decide the particular appeal will review the record and take such action as the circumstances call for. The Director or the Ad Hoc Appeals Board may direct a hearing on the entire matter or specified portions thereof, may decide the appeal forthwith upon the record already made, or may make other disposition of the case. Upon request and for good cause shown, the Director or an Ad Hoc Appeals Board may grant an opportunity for oral argument. Any sioner's discretionary authority and, therefore, is final for the Secretary.

§271.84 Appeals from Bureau decision to cancel contract for cause.

A tribal organization (unless restricted by the tribal resolution under §271.18(c)(2) or subsequent resolutions) may appeal the Bureau's decision to cancel for cause any contract made under this Part. Such appeal shall be made to the Director of the Office of Hearings and Appeals as provided in Subpart G of 43 CFR Part 4.

PART 272—GRANTS UNDER INDIAN SELF-DETERMINATION ACT

Subpart A—General Provisions

Sec.

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272.2 Definitions.
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272.53 Appeals from decision or action by Area Director.
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AUTHORITY: Sec. 104, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

SOURCE: 40 FR 51300, Nov. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§272.1 Purpose and scope.

The purpose of the regulations in this Part is to provide the application and approval procedures for the award by the Bureau of grants under section 104(a) of Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203). Title I is known as the Indian Self-Determination Act.

§272.2 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Applicant" means a tribal governing body applying for a grant under this Part.

(c) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Commissioner" means the Commissioner of Indian Affairs.

(f) "Days" means calendar days.

(g) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established, or organized for the purpose of profit.

(h) "Grant" means a written agreement between the Bureau and a tribal governing body where the Bureau provides funds to carry out specified programs, services, or activities and where the administrative and programmatic provisions are specified.

(i) "Grantee" means the tribal governing body which is responsible for administration of the grant.

(j) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native vil-

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
INDIAN TECHNICAL ASSISTANCE CENTER
1075 SOUTH YUKON
P.O. BOX 26268, BELMAR BRANCH
LAKEWOOD, COLORADO 80226

18A

R: 660 6/6/77

IN REPLY REFER TO
ITAC

JUN 0 1 1977

Memorandum

To: Commissioner of Indian Affairs
Attention: Contracting & Grants Admin. Staff - 660

From: Acting Chief, Indian Technical Assistance Center

Subject: Information requested for P.L. 93-638 oversight hearings

(1) Seventy-nine contract applications that did not receive funding.

A. Chippewa-Cree Tribal Business Council
Rocky Boy's Reservation
Box Elder, Montana 59521

Requested budget: $421,924
Amount of funds available: None
Training of residents who will construct, maintain, and manage the coal supply and distribution facilities plus management and maintenance personnel for retail and recreation centers.

The Confederated Salish & Kootenai Tribes
Flathead Reservation
Dixon, Montana 59831

Requested budget: $337,200
Amount of funds available: None
Develop capabilities within the tribe to construct, operate, maintain and manage tribal facilities and programs. Three specific areas are identified: building construction and maintenance; utilities construction and maintenance; and tribal operations.

Coushatta Tribe of Louisiana
P. O. Box 988
Elton, La. 70532

Requested budget: $324,534
Amount of funds available: None
Train residents in general construction trades; construct five four-bedroom houses; and construct a tribal office building.

Nooksack Indian Tribe
P. O. Box 157
Deming, Washington 98244

Requested budget: $302,115
Amount of funds available: None
Train local residents in office and management skills, to include: program planning, management and evaluation; personnel management; accounting; clerical; inventory management; and counter service. Train an additional group of residents in construction crafts and trades.

Isleta Pueblo
P. O. Box 316
Isleta, New Mexico 87022

Requested budget: $300,000
Amount of funds available: None
Letter of intent to contract for a comprehensive training program in construction trades.

Fallon Paiute and Shoshone Tribes
8955 Mission Road
Fallon, Nevada 89406

Requested budget: $338,000
Amount of funds available: None
Train local residents in construction skills; heavy equipment operation and maintenance; land and irrigation development and maintenance; welding.

Kalispel Tribe of Washington
P. O. Box 38
Usk, Washington 99180

Requested budget: $300,000
Amount of funds available: None
Letter of intent to contract for upgrade of skills in economic planning.

San Carlos Apache Tribe
P. O. Box 0
San Carlos, Arizona 85550

Requested budget: $1,213,191
Amount of funds available: None
Reactiviate the abandoned San Carlos Job Corps facility into a vocational-technical training center to prepare tribal people for employment in various tribal department and enterprises.

Santee Sioux Tribe of Nebraska
Niobrara, Nebraska 68760

Requested budget: $300,000
Amount of funds available: None
Letter of intent to contract to continue, improve and expand the training and education opportunities of tribal members.

The Sault Ste. Marie Tribe of Chippewa Indians
206 Greenough St.
Sault Ste. Marie, Michigan 49783

Requested budget: $166,263
Amount of funds available: None
Develop skills in housing construction.

Southern Ute Tribe
Ignacio, Colorado 81137

Requested budget: $287,266
Amount of funds available: None
Prepare tribal members for a career in building trades; develop a tribal construction company; enhance the tribes's administrative business management capabilities; develop facilities maintenance capability.

Turtle Mountain Band of Chippewa Indians
Turtle Mountain Tribal Council
Community Center Building
Belcourt, North Dakota 58316

Requested budget: $480,300
Amount of funds available: None
Provide job opportunities; develop work capabilities and habits; strengthen the tribe's soc-economy; enhance the reservation to draw industry; provide a maintenance work force.

Turtle Mountain Community College
P. O. Box 340
Belcourt, North Dakota 58316

Requested budget: $197,248
Amount of funds available: None
Add voc-tech program to the curriculum.

Ute Mountain Tribe
Towaoc, Colorado 81334

Requested budget: $300,000
Amount of funds available: None
Letter of intent to contract for economic development.

Native Village of Venetie Corporation
  and Tribal Government
S. R. Box 10402
Chena Pump Station Road
Fairbanks, Alaska 99701

Requested budget: $300,000
Amount of funds available: None
Letter of intent to provide training in: saw mill and logging; heavy equipment operation and maintenance; plumbing; electrical; business management.

Walker River Paiute Tribe
Schurz, Nevada 89427

Requested budget: $300,000
Amount of funds available: None
Provide job opportunities and training in: building trades and heavy equipment operation and maintenance.

Yerington Paiute Tribe
Yerington, Nevada 89447

Requested budget: $300,000
Amounts of funds available: None
Proposed tribal enterprise and education program.

Devils Lake Sioux Tribe
Sioux Community Center
Fort Totten, North Dakota 58335

Requested budget: $300,000 & $55,000
Amount of funds available: None
Provide employment for approximately 60 tribal members and develop a personnel management system (2 proposals).

Yankton Sioux Tribe
Route No. 3
Wagner, South Dakota 57380

Requested budget: $300,000
Amount of funds available: None
Community works programs, law enforcement programs, build access roads on reservation.

Rosebud Sioux Tribe
Rosebud, South Dakota 57570

Requested budget: $300,000
Amount of funds available: None
Community projects for low rent and public housing, work on pow-wow grounds, rodeo and race track.

Crow Creek Sioux Tribe
Fort Thompson, South Dakota 57339

Requested budget: $300,000
Amount of funds available: None
Well drilling for farmers, training in various construction and business skills.

Sisseton-Wahpeton Sioux Tribe
Rural Route 2, Box 144
Sisseton, South Dakota 57262

Requested budget: $400,000
Amount of funds available: None
Tribal parks improvement, construct walk, drives parking areas, remodel tribal food processing building.

Jicarilla Apache Tribe
P. O. Box 147
Dulce, New Mexico 87528

Requested budget: $300,000
Amount of funds available: None
Arts and Crafts program, fencing, road repairs, cutting firewood for sale in urban areas.
Irrigation projects for increasing crop productions.

Pyramid Lake Paiute Tribe
P. O. Box 256
Nixon, Nevada 89424

Requested budget: $300,000
Amount of funds available: None
Construct housing, install fencing and cattle guards, supply support for bicentennial funded museum.

Shoshone-Paiute Tribe
Duck Valley Reservation
P. O. Box 219
Owyhee, Nevada 89832

Requested budget: $300,000
Amount of funds available: None
Construct tribal shop building.

Warm Springs Confederated Tribes
Warm Springs Reservation
Warm Springs, Oregon 97761

Requested budget: $300,000
Amount of funds available: None
Construct tribal Arts and Crafts sales building train personnel for tribal motel positions.

Hoopa Valley Tribe
P. O. Box 817
Hoopa, Calif. 95546

Requested budget: $300,000
Amount of funds available: None
Business training program, forestry tree planting, install fencing and cattle guards, improve homes.

Tule River Tribe
P. O. Box 589
Porterville, Calif. 93257

Requested budget: $300,000
Amount of funds available: None
Equipment maintenance program, improve tribal road conditions, fish and game management training and hospital and health facility positions.

Fort Peck Tribal Executive Board
P. O. Box 1027
Poplar, Montana 59255

Requested budget: $500,000
Amount of funds available: None
Develop skills center training complex, improve housing, furnish law enforcement and health programs, building trades training.

Leech Lake Reservation Business Committee
P. O. Box 308
Cass Lake, Minnesota 56633

Requested budget: $166,740
Amount of funds available: None
Construct tribal owned office building.

Shoshone and Arapaho Tribes
Wind River Indian Reservation
P. O. Box 217
Fort Washakie, Wyoming 82514

Requested budget: $500,000
Amount of funds available: None
Employment and training for 52 participants in repair and maintenance, construction, range management.

Navajo Tribe
Window Rock, Arizona 86515

Requested budget: $1,000,000
Amount of funds available: None
Reconditioning of surplus equipment, refurnishing and construction of buildings, equipment furniture, fixtures, livestock and water systems.

Colorado River Tribe
Route 1, Box 23-B
Parker, Arizona 85344

Requested budget: $300,000
Amount of funds available: None
Rehabilitation and beautification of tribal facilities and land training in heavy equipment operation.

Hualapai Tribe
P. O. Box 168
Peach Springs, Arizona 86434

Requested budget: $206,400
Amount of funds available: None
Survey and grace 22 miles of access roads, build swimming pool, commerc ial camp grounds, parks, install water lines to remote storage tanks.

Lummi Tribal Business Council
P. O. Box 309
Marietta, Washington 98268

Requested budget: $500,000
Amount of funds available: None
Economic development in; water well drilling, pile driving and road construction and maintenance.

Makah Tribe
P. O. Box 115
Neah Bay, Washington 98356

Requested budget $300,000
Amount of funds available: None
Construct tribal building and recreational facilities.

Port Gamble Band of Klallam Indians
P. O. Box 280
Kingston, Washington 98346

Requested budget: $501,952
Amount of funds available: None
Propose the construction and operation of Health Clinic at $141,500 and vocation training program with costs of $360,452.

Swinomish Tribe
Swinomish Indian Senate
LaConner, Washington 98257

Requested budget: $300,000
Amount of funds available: None
Improve tribal fishing industry through repairs renovations, expansion and upgrading. This is done through further training of administrative staff.

Tulalip Tribe
6700 Totem Beach Road
Marysville, Washington 98270

Requested budget: $300,000
Amount of funds available: None
Training of tribal administrative staff, up-date tribal enrollment last roll done in 1934, participants in alcoholic programs and community work projects.

Mohawk Tribal Council
Hogansburg, New York 13655

Requested budget: $300,000
Amount of funds available: None
Request for economic development and voc-tech training.

Mississippi Band of Choctaw Indians
Philadelphia, Miss. 39350

Requested budget: $300,000
Amount of funds available: None
Operate training program in construction trades.

Metlakatla Indian Community
Metlakatla, Alaska

Requested budget: $300,000
Amount of funds available: None
Establishment of Indian business and enterprises to promote training and employment opportunities for Indian people.

Fort McDowell Mohave-Apache Community
P. O. Box 244
Fountain Hills, Arizona 85268

Requested budget: $57,228.40
Amount of funds available: None
Developa training program to provide tribal members with skills in the heavy equipment trades.

Havasupi Tribal Council
P. O. Box 10
Supai, Arizona 86435

Requested budget: $300,000
Amount of funds available: None
Request for training program in agri-business, tourism, silversmithing and building maintenance.

Choctaw Nation of Oklahoma
Durant, Oklahoma 74701

Requested budget: $300,000
Amount of funds available: None
Improve tribally operated programs and/or activities and acquire the necessary resources to design and plan new tribal operations.

Elko Colony Council
Ely, Nevada 89301

Requested budget: $300,000
Amount of funds available: None
Provide training in construction trades and economic development.

Yankton Sioux Tribe
Route one
Wagner, South Dakota 57307

Requested budget: $52,706
Amount of funds available: None
Train local Indian people in both construction trades and heavy equipment operators.

Skokomish Tribe
Route 5, Box 432
Shelton, Wash. 98584

Requested budget: $300,000
Amount of funds available: None
Letter of intent.

Yavapai Apache Tribe
P. O. Box 236
Clarkdale, Arizona 86322

Requested budget: $301,000
Amount of funds available: $239,000
Building Trades,; Drafting and Surveying; Equipment operation; and Management-Accounting training.

Quechan Tribal Council
P. O. Box 1352
Yuma, Arizona 85364

Requested budget: $289,000
Amount of funds available: $171,000
Carpentry; Electrical; Plumbing; Basic Horticulture skills training.

Southern California Tribal Chairmen's Assoc., Inc.
P. O. Box 52
Valley Center, Calif. 92082

Requested budget: $369,000
Amount of funds available: $331,000
Development of adult training facility including secretarial; carpentry; electrical; and plumbing training.

Nez Perce Tribe of Idaho
P. O. Box 305
Lapwai, Idaho 83540

Requested budget: $440,000
Amount of funds available: $267,000
Training for employment and development of the reservation. Printing and publications; tribal business management; building enterprise.

United Tribes of Kansas and
Southeast Nebraska
P. O. Box 29
Horton, Kansas 66439

Requested budget: $343,000
Amount of funds available: $296,000
Heavy equipment; develop skills; buidling trades, develop skills.

Kickapoo Tribe of Kansas
Route 1, Box 157-A
Horton, Kansas 66439

Requested budget: $321,000
Amount of funds available: $293,000
Operation of Heavy equipment; Building trades; and clerical training.

Red Lake Band of Chippewa Indians
Red Lake, Minnesota 56671

Requested budget: $648,000
Amount of funds available: $585,000
Building trades; heavey equipment operation; heavy equipment mechanics; logging; forestry and saw mill trades; fish and wildlife.

Blackfeet Tribal Business Council
Blackfeet Indian Agency
Browning, Montana 59417

Requested budget: $600,000
Amount of funds available: $355,000
Carpentry; heavy equipment; electrical; and plumbing training.

Omaha Tribal Council
Macy, Nebraska 68039

Requested budget: $1,163,000
Amount of funds available: $372,000
Operator, heavy equipment - train tribal members for employment.

Winnebago Tribal Council
P. O. Box 687
Winnebago, Nebraska 68071

Requested budget: $265,000
Amount of funds available: $237,000
Building trades, forestry training.

Washoe Tribe of Nevada and Calif.
P. O. Box 284
Stewart, Nevada 89437

Requested budget: $368,000
Amount of funds available: $293,000
Equipment mechanic welding; construction trades; office occupations training.

Pueblo of Zuni
P. O. Box 338
Zuni, New Mexico 87327

Requested budget: $325,000
Amount of funds available: $240,000
Building trades; communications training.

Pueblo of Laguna
P. O. Box 194
Laguna, New Mexico 87026

Requested budget: $400,000
Amount of funds available: $355,000
Building trades; facility and utility; heavy equipment; tribal Government operation; health related operation training.

Cherokee Boys Club, Inc.
P. O. Box 507
Cherokee, North Carolina 28719

Requested budget: $400,000
Amount of funds available: $355,000
Building trades; food service; heavy equipment operator; surveying and engineer; masonry; bus driving; administrative assistant training.

Three Affiliated Tribes of
Fort Berthold
P. O. Box 158A
New Town, North Dakota 58763

Requested budget: $370,000
Amount of funds available: $263,000
Heavy equipment operation; task force tribal Government development; and building trades training.

Cherokee Nation of Oklahoma
P. O. Box 119
Tahlequah, Oklahoma 74464

Requested budget: $464,000
Amount of funds available: $414,000
Building trades; property and inventory department development; tourism development; day care center development and training.

Chickasaw Nation of Oklahoma
Chickasaw Tribal Office
P. O. Box 645
Sulphur, Oklahoma 73086

Requested budget: $361,000
Amount of funds available: $279,000
Construction trades training, construction enterprise development.

Creek Nation of Oklahoma
P. O. Box 1114
Okmulgee, Oklahoma 74447

Requested budget: $371,000
Amount of funds available: $356,000
Construction management; plant management; agriculture management; tribal systems.

Osage Tribal Council
P. O. Box 178
Pawhuska, Oklahoma 74056

Requested budget: $516,000
Amount of funds available: $355,000
Paint/drywall; carpentry and masonry; electrical and plumbing; oil field on-the-job training.

Central Tribes of the Shawnee
  Area, Inc.
624 North Broadway
Shawnee, Oklahoma 74801

Requested budget: $450,000
Amount of funds available: $379,000
Carpentry, electrical, heavy equipment, masonry, plumbing, enterprise development training.

North Central Inter-Tribal Council
  of Oklahoma, Inc.
P. O. Box 2384
Ponca City, Oklahoma 74601

Requested budget: $355,000
Amount of funds available: $255,000
Carpentry, electrical, heavy equipment, masonry, plumbing, enterprise development training.

Southwest Oklahoma Inter-Tribal
  Association, Inc.
P. O. Box 393
Apache, Oklahoma 73006

Requested budget: $532,000
Amount of funds available: $509,000
Carpentry, paint, drywall, plumbing, masonry, electrical training.

Confederated Tribes of the Umatilla
  Indian Reservation
P. O. Box 638
Pendleton, Oregon 97801

Requested budget: $459,000
Amount of funds available: 178,000
Commercial enterprises; building trades; forest range training.

Lower Brule Sioux Tribe
Lower Brule, South Dakota 57548

Requested budget: $583,000
Amount of funds available: $213,000
Heavy equipment operation; building trades; conservation; and agricultural engineering training.

Cheyenne River Sioux Tribe
P. O. Box 100
Eagle Butte, South Dakota 57625

Requested budget: $410,000
Amount of funds available: $355,000
Building maintenance, heavy equipment operator and maintenance, teacher's aides training.

Chehalis Tribal Council
P. O. Box 243
Oakville, Washington 98568

Requested budget: $278,000
Amount of funds available: $255,000
Commercial business and occupational training; enterprise and equipment training.

Bad River Band of Chippewa Indians
Route 2
Bad River Skill Center
Odanah, Wisconsin 54861

Requested budget: $340,000
Amount of funds available: $291,000
Carpentry, electrical, plumbing, masonry.

Menominee Restoration Committee
P. O. Box 168
Keshena, Wisconsin 54155

Requested budget: $354,000
Amount of funds available: $326,000
Carpentry, plumbing, masonry, electrical.

Great Lakes Inter-Tribal Council, Inc.
Management and Skills Training
Box 11
Odanah, Wisconsin 54861

Requested budget: $627,000
Amount of funds available: $355,000
Water and sewer; wood products management; heavy equipment operations; forestry.

Great Lakes Inter-Tribal Council, Inc. (Library)
Box 5
Lac du Flambeau, Wisconsin 54538

Requested budget: $83,000
Amount of funds available: $59,000
Indian Library Training Center

Lac Courte Oreilles Governing Board
Route 2
Stone Lake, Wisconsin 74876

Requested budget: $150,000
Amount of funds available: $144,000
IBM project - introduction to IBM training and operation and handling of source data.

The above written proposals and letters of intent are on file at ITAC. Telephone inquiries are not listed. FY 1978 proposals are not listed.

Many written proposals have not been received because Tribes did not feel they had the time to submit a proposal without some assurance of funds being available.

(2) Yankton Sioux Tribe
Route one
Wagner, South Dakota 57307

Amount of funds available: None
Contract Amount: $52,000
Contract to establish and operate a tribal construction company.
Source of funds: ITAC operating budget due to personnel lay.

(3) NONE

Robert J. Livingston

Chairman ABOUREZK. Our next panel is the Indian Health Service with Dr. Emery Johnson, and he is accompanied by Mr. Jim Danielson and presumably other members of his staff.

Would you introduce your staff?

STATEMENT OF DR. EMERY JOHNSON, DIRECTOR, INDIAN HEALTH SERVICE, ACCOMPANIED BY PAUL H. DICKERSON, PROCUREMENT ANALYST, IHS; DANIEL P. DOZIER, DIRECTOR, CONGRESSIONAL LIAISON, HEW; LIONEL H. deMONTIGNY, M.D., DIRECTOR, COMMUNITY DEVELOPMENT, IHS; AND JAMES DANIELSON, PROJECT MANAGEMENT—PUBLIC LAW 93-638, IHS

Dr. JOHNSON. First, Mr. Chairman, I would like to introduce Mr. Dan Dozier, who is the congressional liaison officer of the Department of Health, Education, and Welfare.

From my staff on my immediate right is Dr. Lionel deMontigny, who is Director of our Division of Community Development; on his right is Mr. Jim Danielson, who is the project manager on Public Law 93-638 implementation; on my far left is Paul Dickerson, who is our contract officer, Dan McGuire, who is back in the audience, is our grants man. In case you have any technical questions on contracts or grants, those two gentlemen can answer them.

Chairman ABOUREZK. Let me say at the outset that if we ask a question up here, then anybody that wants to answer please feel free to answer it because we are interested in not who said it but in the answer.

Second, you all sat through the BIA portion. It goes a lot quicker if you try to stick to the issue and not try to get off. I personally do not intend to let you get off the issue so it would save a lot of trouble if you would stay on it.

Dr. JOHNSON. I would like to submit an opening statement for the record and briefly summarize it.

Chairman ABOUREZK. It will be inserted.

[The prepared statement of Dr. Johnson follows:]

Mr. Chairman and Members of the Committee:

Thank you for your invitation to appear before this committee to discuss the progress made by the Department in implementing P.L. 93-638, the Indian Self-Determination and Education Assistance Act.

The Indian Health Service (IHS) long has subscribed to the thesis of Indian participation in the management of its program activities, and to the practice of Indian involvement in program guidance and actual operation of program elements.

An example is the close, cooperative working relationship which has developed between IHS and tribal governments, tribal health boards, and Area and national Indian organizations. Another example is the Community Health Representative (CHR) program. Under this program, IHS contracts with tribes to deliver specified health services. The tribes recruit, employ and supervise CHR's, while IHS provides needed training. A third example is found in the field of environmental health. Even before passage of P.L. 93-638, the IHS environmental health component initiated actions to assist tribes for their eventual assumption of environmental health activities. Illustrative of the many activities aimed at this end, is the IHS Office of Environmental Health's development and coordination of training courses for tribally selected CHR's to prepare them for the performance of certain basic activities in environmental health.

In spite of successes attending these and other efforts, IHS recognized the constraints placed on the growth of Indian control of IHS activities as a result of inadequate authorities specifically designed to achieve such ends. It was for these long-standing reasons, therefore, that the IHS welcomed the passage of P.L. 93-638, and has enthusiastically undertaken its implementation.

One of the first major steps required for implementation was the development of regulations. These, in their final form, were published in the Federal Register on November 14, 1975. Even though they became broadly available to the general public, additional distributions were made through national Indian organizations and to individual tribes. In addition, P.L. 93-638 appeals procedures available to the Indians were published in the Federal Register.

Major steps also had to be taken to assure that IHS would be properly and adequately postured to carry out the Federal Indian health role prescribed in the Act and the regulations. One of these major steps was a decision to treat P.L. 93-638 activities in concert with the basic IHS management modality. It was decided that, like other IHS program activities, these would be highly decentralized. In this way responsibilities and commensurate authorities required to carry out activities have been placed in the IHS Areas and, therefore, are as close to the tribes as possible. This closeness expedites tribal requests for assistance as well as IHS responses to those requests.

Another major step towards implementation is the strengthening of appropriate parts of the IHS structure. Although IHS had not utilized grants as a feature of its operations, it had regularly used contracts to conduct some of its business. P.L. 93-638 contracts, however, were different in many ways. Illustratively, special features of P.L. 93-638 regulations include the waiving of identifiable, inappropriate procurement provisions of general contracts. The unique features of P.L. 93-638 contracts, together with a greatly expanded contract workload, and an entirely new grants activity required modification of existing, internal contracting processes, as well as development of new grants staff capacities to assure proper administration of the contracts and grants to be awarded in accordance with new authorities. Thus, IHS Area and Program Office administrative staff have had to make adjustments in the type of workload because of changes brought about by P.L. 93-638, while, in Headquarters, the contract administrative capacity has been strengthened, and a grant capacity created. Handbooks on the contracting process have been developed to assist both tribal personnel and IHS staff in understanding and utilizing these contract authorities. These have been distributed to such parties. Contracting authority, along with cost and pricing analysis, has been redelegated to the IHS Area and Program Office for those contracts under $100,000. For contracts over this amount, the approval authority is retained at the Headquarters level, with review and comment by HSA. A contract has been let for the development of a handbook for the use of the tribes in staffing their programs including the use of the Intergovernmental Personnel Act and other sources of trained personnel.

An interim handbook and internal procedures for grants have been developed and distributed, while waiting clearance of permanent issuances. Grants applications kits have been developed and distributed to interested tribes. Training sessions have been conducted with both IHS and tribal personnel, with more being planned for the latter part of the summer and early fall.

The published materials which have been distributed, and the training sessions are both essential to the P.L. 93-638 process. Equally important to the tribes is the ready availability of technical assistance in the administrative and professional health fields. We have taken steps to assure that such assistance is available. In-place staff of the Area and Program Offices are responsible for receiving and honoring requests for technical assistance, with backup from IHS headquarters.

In order to assure that all P.L. 93-638 activities are carefully coordinated, we have designated a P.L. 93-638 coordinator in Headquarters and in each Area and Program Office.

To assist in the implementation of P.L. 93-638, IHS has developed and is implementing a methodology to provide a system description for each Service Unit (local program management unit) of IHS. This means that each program component part of the local health services delivery system is identified thereby lending itself to tribal consideration for contract or grant purposes.

Also needed in order to properly manage the implementation of P.L. 93-638, is a comprehensive statistical data base. Different data are needed by the three major elements involved in the implementation. These elements are tribal, IHS field (Area/Program Offices), and IHS headquarters. Tribal data requirements will be identified by consulting with selected experienced tribal contractors. The IHS has initiated steps to utilize and where necessary, to supplement already existing data systems to provide the necessary data.

The P.L. 93-638 cost of tribal operation of a health program activity cannot exceed the amount that it costs IHS to operate that same activity. This is to avoid depleting the resources necessary to maintain services to all other tribes served, and maintaining one tribe's program at the expense of another. However, the FY 1977 implementation funds for P.L. 93-638 include funds designated to meet tribal contract administrative costs, and are to be used when IHS program funds are inadequate to properly administer the contract.

We are pleased to report that our efforts to prepare IHS to be responsive to tribal P.L. 93-638 initiatives have been fruitful. To date 41 contracts have been processed in the amount of $6,192,677. In addition 92 grant applications have been processed and 32 have been awarded for a total of $2,509,240. They are mainly for the purposes of planning and development. It must be acknowledged, however, that money spent and number of grants awarded and contracts let are not true measures of success. In the final analysis, the health status of the Indian population and the quality of care available and provided are the true measures.

In concluding this brief overview of IHS activities aimed at implementing P.L. 93-638, I would like to note that we recognize that this Act provides unprecedented opportunities for Indian people to pridefully enter into a new phase of their historical experience. I would like to note, also, that we recognize the grave responsibilities which IHS bears in assisting Indian people to take this historic step if, when, and to such extents as they choose. We have honestly tried our best, and shall strive to do even better in carrying out the letter of the law, and to assure that Congress' intent is realized. We would like it to be said that every qualified Indian group wishing to grasp P.L. 93-638's opportunities reaped its benefits in some small measure because IHS recognized its duty and happily carried it out.

This concludes my opening remarks, Mr. Chairman. I note that on May 26, 1977 you addressed a number of questions to Secretary Califano. I would like, at this time, to submit the answers to those questions for the record as part of my opening statement. Mr. Parker, Chief Counsel of the Committee raised a number of additional questions on June 1, which are being worked on and will be forwarded for the record in the near future.

APPENDIX A

Responses to Qestions Initiated by Senator Abourezk, Chairman, United States Senate Select Committee on Indian Affairs, in his Letter of May 26, 1977, to the Secretary of Health, Education, and Welfare, Joseph Califano

1. How many contracts under 93-638 has the Department entered into with various Indian groups or tribes?

   ANSWER. A total of 41 contracts have been let under authority of P.L. 93-638.

2. What were these contracts for?

   ANSWER. Enclosed at Tab A is a list of contracts, funded under the authority of P.L. 93-638. The list identifies the purpose for which the individual contracts were funded.

3. How much money were these contracts for?

   ANSWER. The total amount for contracts funded under authority of P.L. 93-638 is $6,192,677.

4. Have any contract applications been denied?

   ANSWER. The Indian Health Service (IHS) has not formally declined to contract with a tribe for the assumption of any IHS operated programs.

5. For what reason were they denied?

ANSWER. Not applicable.

6. How much money was retained by the agencies for the administration of 93-638 contracting?

ANSWER. There was no money retained by the IHS for the administration of P.L. 93-638 contracts from funds specifically made available to implement P.L. 93-638. The contracts with tribes are written for the total operating cost of the program elements being contracted for.

7. How much administrative costs monies were given to the contractor for contract support above the basic contracting amount?

ANSWER. A total of $5,653,000 was retained by IHS headquarters to cover additional expenses incurred by the tribal contractors in administrating the programs contracted for. Of this amount $2,210,500 has been obligated to date.

8. What arrangements are made for advance payments to contractors?

ANSWER. Advance payments are extended to contractors for up to twenty five percent (25%) of one year's funding. This is deemed to be sufficient to cover expenses for a period during which invoices are processed by the

Area Offices and submitted for payment. The appropriate documents for approval of Advance Payments are prepared by Area Office personnel and forwarded, through channels, to the appropriate authority for approval. The IHS does not utilize the letter of credit system of payment for performance under contracts because of its decentralized payment system.

9. How many requests have been made for advance payments, and how much money was requested out of the total cost of the contract?

ANSWER. Ten requests for advance payments were received and subsequently approved. The total advance payments amount is $545,694 of a total amount awarded for these contracts of $2,122,105.

10. How many were turned down and for what reasons?

ANSWER. IHS has not turned down any requests for advance payments initiated under P.L. 93-638.

11. How many were subsequently awarded?

ANSWER. Ten advance payment awards were approved. - See item nine above.

12. What is the policy of the agencies when a contract request is received at or near the end of the fiscal year?

ANSWER. A request to contract received at the end of the fiscal year would be discussed in terms of the upcoming Fiscal Year.

13. What are the appeal procedures if a contract is denied?

ANSWER. There are special appeals procedures for declinations of contract requests made under P.L. 93-638. A copy of the regulations spelling out these procedures is enclosed at Tab B.

14. Are they the same for denial due to lack of funds? If not, how do they differ?

ANSWER. The special appeals procedures discussed in the above answer covers all declinations based on lack of funds.

15. What are the time restrictions in the appeal process from a denial for lack of funds?

ANSWER. Not applicable.

16. How much was the pre-contract technical assistance budget in FY 1975-1976, FY 1976-1977, and FY 1977-1978?

ANSWER. No funds were appropriated in FY 76. The FY 77 appropriation contains $18,500,000 for implementation and technical assistance. The President's budget for FY 78 contains $6,500,000 for these activities. No identification of specific funds have been made for pre-contract technical assistance.

17. How much was spent of those monies appropriated for that purpose?

ANSWER. As stated, no identification is made of "pre-contract" technical assistance, however, $597,428 was spent in the technical assistance category.

18. How much went to non-Indian businesses for providing technical assistance?

ANSWER. $59,347 was used to provide technical assistance by non-Indian businesses. $185,000 went to Indian tribes and $28,800 went to Indian firms for providing technical assistance.

19. What have the technical assistance monies been spent on?

ANSWER. This money is used to provide assistance to tribes for management of health programs, staffing, planning, developmental activities and other start up requirements.

20. How much consultation with the Indian tribes was made regarding their views on how the technical assistance monies should be spent?

ANSWER. Consultation with the tribes is inherent in the overall IHS approach in providing information to tribes on available resources. This process is described below in Question #21.

21. How is this tribal input obtained?

ANSWER. Tribal input is provided on a tribe by tribe basis The process begins by reviewing Self-determination from the perspective of what it means to the individual tribe and IHS. Once a tribe indicates interest in assuming a program, the most significant steps in the pre-application stage are jointly, with the potential applicant, the identifying of needs (resources, money, personnel, equipment, etc.) and developing material plans to respond to these needs.

22. How much in s104 grant monies were distributed in FY 1975-1976, FY 1976-1977, and FY 1977-1978?

ANSWER. FY 77 is the first year that grant monies are expressly appropriated for the implementation of P.L. 93-638. $10 million was made available for projects, $2,513 million of which were for grants. In FY 78 $6.5 million is contained in the President's budget for similar activities, the breakdown of which will depend upon those tribal requests received and funded.

23. What were these grants for?

ANSWER. The list of grants at Tab C identifies the purpose of the various grants.

24. Were any grant requests turned down? If so, why?

ANSWER. Yes. One - the grant application was not applicable to P.L. 93-638 grant guidelines which call for activities to be funded that are currently being operated by IHS.

25. What is each Area's policies and procedures towards matching-share grants with other agencies?

ANSWER. Each Area follows national policy which is set up by the law, which stipulates that tribes may use monies received under 93-638 authority as matching funds in seeking grants from other agencies.

26. What is the policy in personnel transfers under I.P.A. and 93-638?

ANSWER. The Indian Health Service policy regarding interchange of personnel with tribes under 93-638 is to make such transfers when they are consistent with the needs of the tribe and IHS so as to meet the regulatory requirement of mutual benefit.

27. What kinds of arrangement are made to hold the positions open within the agencies after an I.P.A. transfer has been awarded?

ANSWER. Until recently it was IHS policy to return assignees to a position of the same grade and salary as was occupied before the I.P.A. transfer was effected. A court decision rendered in April, 1977 relating to the filling of vacancies in the IHS has prompted a review of this policy which is as yet incomplete.

28. How many requests for I.P.A. personnel transfer were made by tribes in FY 1975-1976, FY 1976-1977, and FY 1977-1978?

ANSWER.

FY 1977	FY 1976	FY 1977
8	10	12

29. How many personnel were transferred under those requests?

ANSWER. The number of transfers granted was seventeen (17).

30. Were any I.P.A. requests turned down? If so, why?

ANSWER. A total of 2 requests were disapproved. One was due to the fact that the IHS employee could not be released from his one-man office. The other requested appointment of 8 tribal employees as Federal employees, however, no positions were available to accomplish this.

31. How much assistance is given to the tribes with the lengthy application forms, pre-application technical assistance and contract application process?

ANSWER. Once a tribe indicates an interest in contracting, IHS assumes the responsibility to advise the tribe of eligibility criteria and application procedures.

A pre-application conference is scheduled to provide the necessary information for planning purposes and to identify assistance the tribes will need in preparing the proposal.

A critical step in providing assistance is the identification in measurable terms of each program elements. This is extremely vital to proposal development and contract preparations.

In evaluation processes and in budget justifications, IHS provides identified needed assistance during proposal preparation; special emphasis is placed on identifying items that could lead to declination.

IHS then has the responsibility for identifying and providing the guidance and technical assistance to resolve the area in question.

32. What is the relationship between the Central Office and the Area Offices in regard to implementation of 93-638?

ANSWER. The IHS Headquarters has the responsibility for establishing policies, developing guidelines, and providing technical assistance to Areas, and monitoring Area management of Self-Determination activities.

The Areas are responsible for implementing P.L. 93-638 at the operating level, i.e., managing contracts, providing technical assistance.

33. To what extent do the Area Directors control or influence contracts or grants?

ANSWER. Area Directors as the on site IHS managers are responsible for:

a. providing information to tribes;
b. being the initial contact point for tribes;
c. determining eligibility;
d. providing technical assistance;
e. evaluating proposals;
f. negotiating of contracts; and
g. approving and managing contracts, (except contracts for more than $100,000 which are approved by the Director, IHS.

34. To what extent do the Superintendents control or influence contracts or grants?

ANSWER. Not applicable.

35. To what extent does the central office control contracts and grants?

ANSWER. IHS Headquarters sets policies, provides guidelines and technical assistance to Areas, and monitors and evaluates management by Area offices of contract and grant programs in both programmatic and administrative areas. Contracts of $100,000 and over are subject to review and approval by IHS Headquarters. All grants are reviewed and approved by IHS Headquarters.

36. What mechanisms are set up for monitoring of contracts and grants?

ANSWER. P.L. 93-638 contracts are monitored by IHS from both the financial and technical performance aspects. Also, each contract contains a schedule of various required reports. As the types of reports needed varies from project to project, the language of the individual contract is tailored to provide for specified reports and a schedule for submission. These reports are submitted to a designated IHS project officer and are reviewed for compliance with contract objectives and goals. In addition, site visits are performed on an "as needed" basis. Telephonic communications are maintained as appropriate. The contractor customarily invoices on a monthly basis. Following payment, invoices are entered in a payment register and made a part of each contract file. This provides an accurate record of expenditures to date and unexpended balances.

These monitoring systems provide a method of maintaining current data on contract compliance and performance and the early identifications of problems and the initiation of necessary corrective actions including, where necessary, tehcnical assistance.

Finally, IHS headquarters staff, occasionally accompanied by HSA contracts staff personnel, make periodic visits to each IHS Area and Program Office to ensure that they are complying with the requirements covering the development and evaluation of tribal proposals, the negotiation of contracts and other contract procedures.

37. What is the policy of the Department when a request for contract is received for a service which is not provided by the Department, but is a legitimate function of the tribal government?

ANSWER. The request is referred to the appropriate Department and the applicant is so notified and, further, is informed that the P.L. 93-638 does not apply to the application. When appropriate, the IHS assists the tribe in making contact and dealing with the proper agencies.

38. What kinds of malpractice insurance arrangments are made if a tribe or tribes contract for a hospital facility or for clinics?

ANSWER. The cost of malpractice insurance is an allowable expense chargeable to the contract.

39. What is the Department's policy with regard to s7(b) of 93-638?

ANSWER. The Department developed two contract clauses, Indian Preference in Training and Employment and Use of Indian Business Concerns, to implement the requirements of Section 7B. It is the Department's policy to apply these clauses to contracts resulting from the referenced Act and any other Acts authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians.

40. How has the Department revised its contracting policies and procedures in regard to s7(b) of 93-638?

ANSWER. On March 8, 1976 the Department wrote to the Director, Federal Procurement Regulations (FPR) staff, GSA, requesting that the FPR be amended to include suitable contract clauses that would cover government-wide applicability of Section 7B. In the meantime, we have initiated actions to ensure HEW-wide implementation of the 7B requirements to all applicable Indian program areas. We have recently released for publication in the *Federal Register* a proposed amendment which will add the referenced clauses to the Department's implementation of the procurement regulations pertaining to the Buy-Indian Act, and have notified other principal operating components of the Department as to the need to include the referenced clauses in the Indian program areas. In the near future, the Department's procurement regulations will be amended to extend the 7B coverages to all applicable (existing and future) Indian program areas.

Enclosures:

Tab A - Contracts Funded Under P.L. 93-638 Authority

Tab B - Appeals Procedures for Declinations

Tab C - Grants Funded Under P.L. 93-638 Authority

I. Summary of P.L. 93-638 Authority Contracts

A. By Area

ABERDEEN NUMBER OF CONTRACTS - 3 TOTAL AMOUNT - $683,482

Contract Number	Contractor & Purpose	Amount
241-76-0464	Oneida Tribe of Wisconsin "Development of Outreach Program"	50,000
241-77-0354	Menominee Restoration Committee "Implement and Operate Health Services on Menominee Reservation"	584,482
241-77-0378	Sisseton-Wahpeton Sioux Tribe "Provide Mastery Planning Study for Sisseton Hospital"	49,000

ALASKA NUMBER OF CONTRACTS - 0 TOTAL AMOUNT - 0

ALBUQUERQUE NUMBER OF CONTRACTS - 0 TOTAL AMOUNT - 0

BEMIDJI NUMBER OF CONTRACTS - 2 TOTAL AMOUNT - $700,000

Contract Number	Contractor & Purpose	Amount
239-76-0031	Menominee Restoration Committee "Develop a Comprehensive Health Program, Coordinate & Oversee Construction of New Clinic"	250,000
239-76-0034	Red Lake Band of Chippewas "Design & Develop Health Facility"	450,000

OKLAHOMA CITY NUMBER OF CONTRACTS - 2 TOTAL AMOUNT - $131,792

Contract Number	Contractor & Purpose	Amount
246-77-5016	Citizens Band of Potawatomie "CHR Program"	59,900
246-77-5026	Comanche Tribe of Oklahoma "CHR Program"	71,892

NAVAJO NUMBER OF CONTRACTS - 5 TOTAL AMOUNT - $2,334,299

Contract Number	Contractor & Purpose	Amount
247-77-0012	Navajo Nation "Streptococcal Investigation & Prevention"	117,799

247-77-0013	Navajo Nation "Tuberculosis Control"	164,098
247-77-0014	Navajo Nation "Social Hygiene Control"	136,128
247-77-0017	Navajo Nation "Emergency Medical Technician"	670,134
247-77-0018	Navajo Nation "CHR Program"	1,246,140

PHOENIX NUMBER OF CONTRACTS - 0 TOTAL AMOUNT - 0

PORTLAND NUMBER OF CONTRACTS - 29 TOTAL AMOUNT - $2,024,896

Contract Number	Contractor & Purpose	Amount
246-77-0003	Chehalis Tribal Council "CHR Program"	26,500
246-77-0005	Colville Confederated Tribes "CHR Program"	133,392
246-77-0045	Colville Confederated Tribes "Mental Health Program"	59,127
246-77-0073	Colville Confederated Tribes "CHR Program"	66,400
246-77-0007	Kalispel Tribe of Indians "CHR Program"	27,278
246-77-0009	Lower Elwha Tribe "CHR Program"	22,846
246-77-0010	Lummi Indian Tribe "CHR Program"	40,930
246-77-0062	Lummi Indian Tribe "Health Coordinator"	18,835
246-77-0063	Lummi Indian Council "Otitis Media, Maternal & Infant Child Health"	24,419
246-77-0096	Nez Perce Tribe "CHR Program"	39,475
246-77-0014	Nooksack Indian Tribe "CHR Program"	38,984

246-77-0016	Puyallup Tribe "CHR Program"	51,816
246-77-0071	Puyallup Tribe "Health Planning Project"	64,411
247-77-0095	Puyallup Tribe "Indian Community Clinic"	716,337
246-77-0060	Puget Sound Health Board "CHR Program"	42,995
246-77-0018	Quinault Indian Tribe "CHR Program"	65,002
246-77-0101	Quinault Indian Tribe "Social Health Service Program Coordinator"	57,170
246-77-0099	Shoshone Bannock Tribes "Otitis Media, Maternal & Child Health Program"	40,486
246-77-0102	Shoshone Bannock Tribes "Tribal Health Planning Project"	42,000
246-77-0021	Skokomish Tribe "CHR Program"	44,480
246-77-0022	Spokane Business Council "CHR Program"	53,873
246-77-0022	Spokane Business Council "CHR Program"	53,873
246-77-0023	Squaxin Island Tribe "CHR Program"	26,618
246-77-0080	Suquamish Klallam Tribe "Health Program"	76,120
246-77-0025	Swinomish Indian Tribe "CHR Program"	23,488
246-77-0097	Swinomish Indian Tribe "Health Planning Project"	30,349
246-77-0064	Tulalip Tribe "Comprehensive & Health Planning & Development Process"	42,027
246-77-0079	Warm Springs Tribe "Tribal Mental Health Professional"	32,588

B. Totals for IHS

1. 41 Contracts

2. Amount of Dollars -

Aberdeen	$ 683,482	3 contracts
Bemidji	700,000	2 contracts
Oklahoma City	450,000	2 contracts
Navajo	2,334,299	5 contracts
Portland	2,024,896	29 contracts
TOTAL	$ 6,192,677	41 contracts

Subpart I—Contracts Under the Indian Self-Determination Act

AUTHORITY: secs. 103, 107, 25 U.S.C. 450g, 450k; sec. 3, Pub. L. 83-568, 42 U.S.C. 2004.

Sec.
36.201 Policy and Applicability.
36.202 Effect on existing rights.
36.203 Amendment of regulations.
36.204 Definitions.

CONTRACT PROPOSALS, REVIEW, AND APPEAL

36.205 Eligibility and Application.
36.206 Tribal clearances—initial contracts.
36.207 Tribal clearances—renewal contracts.
36.208 Evaluation criteria.
36.209 Government property.
36.210 Submitting contract proposals.
36.211 Contract proposal approval officials.
36.212 Review.
36.213 Processing time.
36.214 Tribal appeals to proposal declinations.

PROCUREMENT

36.215 Applicability of Regulations.
36.216 Waivers.
36.217 Fair and equal treatment of Indian people.
36.218 Types of contracts.
36.219 Term of contract.
36.220 Use of Indian business concerns.
36.221 Indian preference in training and employment.
36.222 Indemnity and Insurance.
36.223 Exemption from bonds.
36.224 Construction and architect-engineering contracts.
36.225 Performance of personal services.
36.226 Advance payments.
36.227 Record keeping, reporting and audit.
36.228 Availability of information.
36.229 Penalties.
36.230 Contract revisions or amendments.
36.231 [illegible] of contract programs.
36.232 Contractor [illegible].
36.233 Assumption [illegible] of [illegible]
36.234 [illegible] and [illegible]
36.235 [illegible]
36.236 [illegible]
36.237 [illegible]

§ 36.214 Tribal appeals to proposal declinations.

(a) On being advised that an Indian Self-Determination Contract Proposal has been disapproved by the appropriate approving official, and having been informed of the basis of such decision, the tribal organization may file a written appeal to the Contract Proposal Declination Appeals Board within thirty (30) days after receipt of the Declination Notice and may request an informal or formal hearing. The written appeal should either refute or overcome the objections stated as a basis for disapproval. The Contract Proposal Declination Appeals Board shall consider such an appeal, conduct any requested hearing thereon, and recommend a decision to the Director, Indian Health Service, or his representative whose decision shall be final.

(b) The tribal organization and the Indian tribe or tribes affected shall be notified, in writing, of the date, time, place, and purpose of the hearing. The hearing will be conducted within 30 calendar days of written request for a hearing or at such later time as may be agreed upon. The IHS will authorize payment of transportation costs and per diem to allow adequate representation of the applicant, if the meeting is more than 50 miles from the office of the applicant.

(2) The hearing may be held under such rules as may be agreed upon.

(c) If formal hearing is requested, it will be conducted within thirty (30) calendar days from receipt of the written request for a hearing or at such later time as may be agreed upon, and the notice of hearing shall specify in writing the date, time, place, and purpose of the hearing and shall afford the tribe or tribal organization the right:

(1) To written notice of the issues to be considered;

(2) To be represented by counsel;

(3) To written record of the hearing;

(4) To present and cross-examine witnesses;

(5) To file written statements prior to the hearing;

(6) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(d) The decision of the Director, IHS, or his representative on the appeals will be rendered within (15 calendar days from the date of receipt by the Director of the IHS of the Board's recommendation.

(e) The Contract Proposal Declination Appeals Board shall be composed of 5 members appointed by the Director, Indian Health Service, one of whom shall be designated to serve as Chairman.

§ 36.233 Assumption and reassumption of contract programs.

(a) When the Director or his delegate determines that the performance of a contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare or any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, he will, in writing, notify the contractor of such determination and will request that the contractor take such corrective action within such period of time as the Director or his delegate may prescribe.

(b) When the Director or his delegate determines that a contractor has not taken corrective action (as prescribed by him under paragraph (a) of this section) to his satisfaction, he may, after the contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his delegate has made a determination described in paragraph (b) of this section, he shall in writing notify the contractor of such determination and of the contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his delegate shall set forth the reasons for the determination in sufficient detail to enable the contractor to respond and shall inform the contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the contractor for a hearing, the Board, established pursuant to paragraph (d) of this section shall in writing within 10 days of the establishment notify the contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his delegate determines that a contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he may immediately rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he [illegible] immediately notify the contractor [illegible] such action and the basis therefor [illegible] offer the contractor an opportunity [illegible] a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section, to be held within 10 days of such [illegible]

(d)(1) The Contract Appeals Board shall be composed of 3 persons [illegible] by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogatories; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contracts Appeals Board shall make an initial written decision which shall become final [illegible]

(3) [illegible]

(e) [illegible]

SUMMARY OF GRANT AWARDS

Area Office Summary	No. of Awards	Amount
Aberdeen	15	$1,046,530
Alaska	1	48,448
Billings	6	603,052
Phoenix	9	785,210
Portland	1	30,000
	32	$2,513,240

AWARDS BY AREA

ABERDEEN AREA (15 Awards - $1,046,530

Grantee	Type of Project	Grant Number	Amount
Turtle Mountain Band of Chippewa	Planning	56-A-000001-01	100,000
Sisseton-Wahpeton Sioux	Planning	56-A-000002-01	100,581
Devils Lake Sioux	Planning	56-A-000003-01	37,954
Omaha Tribe of Nebraska	Planning	56-A-000004-01	45,437
Flandreau Santee Sioux	Planning	56-A-000005-01	31,273
Rosebud Sioux	Planning	56-A-000006-01	152,353
Standing Rock Sioux	Planning	56-A-000007-01	101,107
Santee Sioux	Developmental	56-D-000008-01	25,000
Yankton Sioux	Developmental	56-D-000009-01	50,000
Cheyenne River Sioux	Planning	56-A-000010-01	104,344
Oglala Sioux	Planning	56-A-000011-01	127,408
Lower Brule	Planning	56-A-000012-01	37,280
Winnebago Tribe	Planning	56-A-000013-01	46,950
Crow Creek	Planning	56-A-000014-01	51,405
Three Affiliated Tribes	Planning	56-A-000015-01	35,438

ALASKA AREA (1 Award - $48,448)

Grantee	Type of Project	Grant Number	Amount
Metlakatla Indian Community	Planning	58-A-000001-01	48,448

BILLINGS AREA (6 Awards - $603,052)

Grantee	Type of Project	Grant Number	Amount
Northern Cheyenne Board of Health	Developmental	59-D-000001-01	102,000
Northern Cheyenne Tribe	Developmental	59-A-000002-01	63,098
Fort Belknap Tribal Health	Developmental	59-A-000003-01	150,151
Fort Peck Tribe	Developmental	59-D-000004-01	114,313
Flathead Reservation	Developmental	59-A-000006-01	95,652
Rocky Boy Health Board	Developmental	59-A-000006-01	77,063

PHOENIX AREA (9 Awards - $785,210)

Grantee	Type of Project	Grant Number	Amount
White Mountain Apache	Developmental	62-A-000001-01	99,905
White Mountain Apache	Planning	62-A-000002-01	99,254
Interim Indian Hlth, Board	Planning	62-A-000003-01	58,555
Ute Mountain Tribe	Planning	62-A-000009-01	64,219
Shoshone-Paiute	Planning	62-A-000005-01	48,525
Inter-Tribal Council of Nevada	Developmental	62-A-000006-01	181,095
Salt River [illegible]ma-Maricopa Tribe	Planning	62-A-000007-01	58,151
San Carlos Apache	Planning	62-A-000008-01	82,301
Hopi Tribal Council	Planning	62-A-000012-01	93,241

PORTLAND AREA (1 Award - $30,000)

Grantee	Type of Project	Grant Number	Amount
Puyallup Tribe	Developmental	64-D-000002-01	30,000

Dr. **Johnson**. We come before this committee to discuss the implementation of this law. As you know, we have been involved in the process of tribal development, which is the essence of Public Law 93–638, for a number of years. We have had considerable experience in the process before the passage of the law. As a matter of fact, our General Counsel kept telling us that we were going to have to get some legislation if we were going to continue to do the things that we needed to do. Public Law 93–638 came along and provided us with the tools and a significant authority. Prior to that time, the development of tribal activities and decisions on operations of health programs depended upon the agreement of the Indian Health Service. Under Public Law 93–638, of course, that agreement is really no longer necessary. The tribes have under-the-law rights to operate the program as it chooses to do. So the law I think met two very important needs. We have gone through the process of developing regulations with the tribes. They were published on November 14, 1975. We have worked with the tribes and we believe closely in learning together, which is an important factor. This is quite unique legislation. There is no counterpart in the Federal system to my knowledge. We have many systems and many approaches to operations that were traditional in the Federal Government which no longer fit. There was a major need to retrain and reorient the thinking and the processes not just at Indian Health Service but also in the agency of which we are a part because we are a part of HEW and must be in conformance with their rules and regulations as well.

We went through this process with the tribes and we have learned together. We have obviously not always been totally successful in what we have attempted. But I believe on balance that we have done reasonably well with this. We certainly feel that the tribes have been most supportive in this process.

Again, to recognize the position that we have taken, we have made the determination that to use Public Law 93–638 authority is a decision to be made by the tribe and not by the Federal agency.

You will find, for example, in the Indian Health Service that we contract with tribes under more than one authority. As a matter of fact, the majority of our tribal contracts, Mr. Chairman, are not under Public Law 93–638 at this point in time. The majority of our contracts with tribes are still under "Buy Indian." The tribes have chosen to continue for whatever reason to contract under the previous authority as they learn more and understand Public Law 93–638 authorities. We expect, and we are seeing this already, that one by one they are beginning to say, "Well, the next time we contract, let us use the 638 route." We do not take the position that the only way to contract for services in the Indian Health Service is Public Law 93–638. This is our opinion. This is our General Counsel's opinion. I believe this has been a satisfactory decision on the part of tribes.

With that, Mr. Chairman, I would say that we are available to answer questions as fully as we can. We got some of the questions earlier and these have been answered. Another series were received last week, some of which require answers to be obtained from the field. Those that we do not answer completely today we will get as soon as possible.

Chairman **Abourezk**. In your answer to question No. 4 in the interrogatory, you state that no contract had been formally declined. Does that mean you have informally declined some?

Dr. **Johnson**. No.

Chairman **Abourezk**. It is not an absolute answer?

Dr. **Johnson**. That is correct. The process of contract development is this. We have a process where the tribal leader says that he would like to consider it. They go out and look at it. We have what we call a precontract negotiation phase. Our staff and the tribe sit down and look at the issues together. During this process many of the problems are resolved. Only if there is an unsolvable problem would it ever get to the point where you would have a denial. I think in that sense we have not had to deny any contracts at the conclusion of the negotiation stage.

Chairman **Abourezk**. Do you always work it out?

Dr. **Johnson**. So far we have always been able to work it out.

Chairman **Abourezk**. So the answer to that could have been that no contracts had been denied; is that right?

Dr. **Johnson**. Right.

Chairman **Abourezk**. We have a letter dated June 1, 1977, from Erin Forrest, director of the Modoc-Lassen Indian Development Community in Alturas, Calif., in which he states that a contract proposal by his committee has been pending for about 9 months. That is a way to avoid denying a contract. Does anybody here have any specific knowledge of that contract?

Dr. **Johnson**. I don't have any specific knowledge of that contract. I think that there is, Mr. Chairman, a problem with the Modoc-Lassen group. I am sorry the Bureau folks are gone because they are probably the experts in this. It has to do with "who is the tribe?" It is the Pit River group of tribes. There are three different communities. The Bureau Commissioner made a decision in January that the official governing body of the tribe was not Modoc-Lassen Development Corp. at all but was in fact the Pit River Tribe and the three different groups involved, plus XL Ranch.

Chairman **Abourezk**. You cannot contract that?

Dr. **Johnson**. That was our judgment.

Chairman **Abourezk**. But you didn't tell them that you left it pending?

Dr. **Johnson**. We were trying to see if we couldn't work it out. It was a jurisdictional dispute within tribal groups. The hope was and our intent was to see if we could not find some way to help them resolve this so that we could have clearly definable tribal entities which could then be contracted with. Maybe we should have said no that we couldn't do it. But, again, our intent was not to precipitate the end of the process but to try to facilitate the solution.

Chairman **Abourezk**. It seems to me that it would be a lot easier for you to say that under your regulations and I presume that is correct that it has to be an official body of the tribe.

Dr. **Johnson**. It has to be an official tribal government.

Chairman **Abourezk**. Could you not state that you are prohibited under law to contract with a development committee?

Dr. JOHNSON. We are answering two different questions. I am sorry for that. You asked me what do I know specifically about this proposal that they have had for 9 months and I should have said, "No." Instead I went out and tried to cast for you what the problems were out there in that without knowing it. I have not seen any proposal to the best of my knowledge from that group which has come through the system for approval or disapproval. I will go back and find out from our California office if there is such a thing. I was trying to give you more answers than I had knowledge for.

Chairman ABOUREZK. In your answer to question No. 7 in the interrogatory we have asked: "How much administrative cost moneys were given to the contractor for contracts supported by the basic contracting amount?"

You state that $5.653 million was retained by IHS headquarters to cover additional expenses incurred by the tribal contractors. Were these moneys earmarked for distribution to tribal contractors as the contracts progressed? Also the administrative costs appear nearly equal to the total amount of the contracts let.

Dr. JOHNSON. Let me try to frame for you the context in which this is done.

In fiscal year 1977 we had an appropriation of $18.5 million. We requested that money from the Congress. We identified it in four basic packages. There is an element of $10 million to be available for grants and contracts under section 104. That is for planning feasibility, development, operations, and so forth.

We also said that there is an overhead cost in tribal contracts that must be paid over and above the Federal money that was going in when we did it ourselves. I think there was some discussion of that with the Bureau earlier.

So, we said that we were going to need additional money for what are called indirect costs for tribal contracts. Then there was a third element that had to do with our administrative costs of operating the program which was 50 positions and the administrative costs related to that and then another sum for technical assistance and training which was available for the tribes.

Now, as I mentioned earlier, Mr. Chairman, we do not have most of our contracts under Public Law 93-638. In fact, only 10 percent of our tribal contracts are 638 contracts; 90 or 89 percent or something like that are in other basically "Buy-Indian" contracts. So that $5.6 million is spread over not just the 638 contracts but spread over the entire $60 million approximately that we have in tribal contracts.

Chairman ABOUREZK. How much have you let in 638 contracts?

Dr. JOHNSON. A little over $6 million.

Chairman ABOUREZK. $5.6 million would cover not only that administrative expense but all this. How much do you have in "Buy-Indian" contracts?

Dr. JOHNSON. $59,700,000, approximately $60 million.

Chairman ABOUREZK. That includes 638?

Dr. JOHNSON. That is correct, that includes 638. So that $5.6 million is spread against that entire sum.

Chairman ABOUREZK. In your answer to interrogatory No. 16 you state that the fiscal year budget for implementation of technical assistance was $18.5 million for fiscal year 1977, but only $6.5 million for fiscal year 1978. Why did you cut it back so sharply.

Dr. **Johnson**. Mr. Chairman, that was an error in the development of the budget process. Our Department testified before both the House and the Senate that an error had been made in the submission of the Department's budget and that they were going to attempt to obtain OMB clearance for having this error corrected. There was some $17 million.

Chairman **Abourezk**. Corrected for fiscal year 1978?

Dr. **Johnson**. Yes. That was the Department's intent.

Chairman **Abourezk**. What would be the new figure.

Dr. **Johnson**. $18.5 million.

Chairman **Abourezk**. How do you inform the tribes about the possibilities of contracting and the availability of 638 grants?

Dr. **Johnson**. We have gone through quite an extensive series of meetings and training sessions with tribal governments and with our own staff. In fact, that is where a lot of the training had to take place. We have made it available to them in direct mailings to tribal governments. We have developed a grant manual. We have developed a contracts manual. We have developed an oversight manual for the entire process. We have a tribal staffing handbook which should be available relatively soon which is sort of an overview and tries to define the process in an overview fashion.

Quite frankly, Mr. Chairman, there are some tribes which are reluctant to deal with Public Law 93–638. Certain tribal leaders have described Public Law 93–638 as being "termination by contract." We feel that it is most appropriate to let them use whatever contracting mechanism they feel comfortable with and really learn from the experience and to see what success other people have had with it. Then I think that they will find out that the tools and the methods of "638" are much simpler. It makes it much easier for the tribe.

Chairman **Abourezk**. How do you inform them of the availability of "638" money?

Dr. **Johnson**. We submit to each area the amount of money available.

Chairman **Abourezk**. It goes to the area?

Dr. **Johnson**. Yes.

Chairman **Abourezk**. How does it get to the tribes?

Dr. **Johnson**. Usually through the intertribal governments or through the area health boards and to the tribal chairmen, and they say, "This is what we have available."

Chairman **Abourezk**. You do it verbally or in writing?

Dr. **Johnson**. In writing.

Chairman **Abourezk**. In writing?

Dr. **Johnson**. Yes; in writing.

Chairman **Abourezk**. You do not miss any tribes that way; is that right?

Dr. **Johnson**. We certainly hope not. We try not to.

Chairman **Abourezk**. I would like for you to explain your Inter-Governmental Personnel Act policy and why the court decision which you mentioned in answer to No. 27 affects it. Another part of this question is this. When a person is loaned out, is his job considered vacated? Do you consider IPA's Federal employees?

Dr. **Johnson**. Many of these assignments are professional staff. They are movable staff. The feeling was that if they were going on an IPA, one should not believe that the present position is unfilled for 2, 3, or 4 years or whatever it might be. So, we were moving them over to the tribes and filling their positions behind them.

The process there was that there would be another position and the individual would know that someplace in the Indian Health Service could use their talents.

Obviously, with the implementation of absolute Indian preference, you can no longer do that with a non-Indian employee because you would then likely have no place to bring them back. So, I suspect that our position from here on in is that we will hold that position vacant for them until such time as they come back.

Mr. **Parker**. Dr. Johnson, are you saying that the court decision which has been referred to in response to our question No. 27 in effect requires you to fill a position, under Indian preference, which has been vacated because of an IPA assignment? Is that what you are saying?

Dr. **Johnson**. It is our understanding that there are no exceptions.

Mr. **Parker**. Is that the terms of the court judgment?

Dr. **Johnson**. That is what our General Counsel is interpreting, yes.

Mr. **Parker**. Presumably that would apply to BIA also.

Dr. **Johnson**. They have different lawyers than we have. [Laughter.]

Mr. **Parker**. In terms of planning for the personnel assignments and other things it constitutes an obstacle; doesn't it?

Dr. **Johnson**. Yes; it certainly does.

Mr. **Danielson**. Mr. Parker, it could be a difference in what they are talking about in terms of the people's assignment as to whether or not you are talking about a person assigned to fulfill the role he was fulfilling and move it over the tribe as a result of a program as compared to them asking for the services of an individual whose activities still exist in the Indian Health Service. You have to look at that in two contexts as to what kind of position a person has left behind.

Chairman **Abourezk**. What you are saying is that you don't consider the job vacated under that procedure; is that right?

Dr. **Johnson**. We had, but I think we are going to have to change that because it makes it impossible to provide an assignment with a non-Indian employee if that is whom they would choose.

Chairman **Abourezk**. Have you experienced any specific problems in implementing "638" that you think might need an amendment to the law?

Dr. **Johnson**. I am not sure whether it requires an amendment, but it certainly has created a good deal of difficulty. This has to do with the definition of who is a tribe in Alaska.

Chairman **Abourezk**: Yes. [Laugher.]

Dr. **Johnson**. I am sorry to bring it up. [Laughter.]

That has given us a good deal of problem.

Chairman **Abourezk**. It has given us all a lot of problems.

Dr. Johnson. Other than that, Mr. Chairman, I see no serious obstacles in the law. There is a lot of polishing that we need to do in our ability to implement.

Chairman Abourezk. We have some additional questions which we would like to submit to you:

[The questions and answers are contained in the following letter:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

RECEIVED AUG 31 1977

AUG 30 1977

Mr. Alan Parker
Chief Counsel
Senate Select Committee on
  Indian Affairs
United States Senate
Washington, D. C. 20510

Dear ~~Mr. Parker~~ Alan

The Secretary has asked me to respond to your letter of June 7 raising a number of questions concerning the implementation of the Indian Self-Determination and Education Assistance Act (P.L. 93-638). It is also in fulfillment of the commitment made in the Departmental testimony by Dr. Emery A. Johnson, Director, Indian Health Service, at the June 7 hearing on the implementation of P.L. 93-638 before the United States Senate Select Committee on Indian Affairs. The Department's response to the questions raised are as follows:

1. What are the HEW staffing requirements for the implementation of P.L. 93-638 on the Central, Area, and local levels?

Answer: The Congress has provided 50 permanent positions for the implementation of P.L. 93-638. These positions have been distributed as follows: five have been retained at headquarters; five have been assigned to the IHS Office of Research and Development in Tucson; four each have been assigned to Aberdeen, Alaska, Albuquerque, Billings, Navajo, Oklahoma City, and Phoenix; and three each to Portland, Bemidji, California, and the United Southeastern Tribes (USET). The implementation of P.L. 93-638 is still in the early stages but it appears that the positions made available are adequate as of this time. The needs are under continuous review.

2. What are procedures used for a three-year contract under P.L. 93-638 and are there any problems being encountered with them now, or in the foreseeable future?

Answer: Briefly, these requirements are that the contract period shall not exceed three years, and can be provided under the following circumstances: the services are continuing in nature; and the Indian tribe or tribes request a contract period of more than one year. These contracts may be renegotiated annually to consider cost revisions and programmatic changes. No particular problems with three-year contracting are anticipated.

3. How are P.L. 93-638, section 104 grants and technical assistance monies allocated between the Area Offices?

Answer: The total funds made available for P.L. 93-638 projects have been apportioned based on the percentage of the annual allocation that went to the various Areas and Programs with certain minor adjustments based on such considerations as cost of living, geography and number of tribes. No separate apportionment was made for grants and technical assistance. The actual amount utilized for specific purposes such as grants or technical assistance is dependent upon the requests by and needs of the various tribes.

4. What monitoring and evaluation activities does the Central Office exercise over P.L. 93-638 implementation?

Answer: This question was answered in some detail in answers 35 and 36 in Appendix A of the Department's opening statement presented by Dr. Johnson.

5. Are there any efforts being made to coordinate implementation of P.L. 93-638 with other agencies that have programs that tribal governments can benefit from? For example, Federal Domestic Assistance Programs to State and local governments.

Answer: Efforts have been initiated directly with the Bureau of Indian Affairs relating to the implementation of P.L. 93-638.

This effort involves periodic meetings to review progress and to review pending regulations and policies regarding other agencies that have programs that tribal governments can benefit from. We have initiated efforts with a number of Departments and independent agencies including Labor (CETA Program), Agriculture (Food Stamps and WIC Programs), Housing and Urban Development (Low Cost Housing Program), the Civil Service Commission (Development of Personnel Systems) and the Office of Management and Budget (Development of Cost Principles for Indian Tribes, and establishment of one cognizant agency awarding Indirect Cost Rates).

In addition, IHS coordination efforts have been initiated with various elements within HEW. Among these elements are: ONAP (Cultural Studies); Office of Education (Educational Assistance); ROFEC (Construction); Bureau of Community Health Services (Migrant Workers and Rural Health Projects); and HCFA (Medicaid and Medicare Reimbursement).

Furthermore, our grants, contracts and program personnel have been trained in the utilization of the catalog of Federal Domestic Assistance and instructed to bring to the attention of the Tribes programs for which the tribes are eligible.

6. Are there any problems being encountered with the P.L. 93-638 regulation in relationship with other agency regulations or Federal laws; i.e., Indian preference and Civil Rights Act of 1964?

Answer: The implementation of P.L. 93-638 is still in the developmental stage. As a result, possible and actual ambiguities, controversies or conflicts between P.L. 93-638 implementing regulations and other Federal laws and regulations are not in full focus. There are a number of areas, however, where there is some evidence of possible future problems.

Section 7(b) requires that contractors and grantees under P.L. 93-638 and other Federal Acts providing authority to grant or contract with or for the benefit of Indians must utilize Indian preference in training, employment, subcontracting and subgranting. This has raised two separate issues.

Some Federal agencies have apparently taken the position that section 7(b) applies only to programs specifically set up to serve Indians. It is the Department's policy that 7(b) applies to all Federal programs whenever they are being utilized to serve Indians. As was stated in our earlier testimony, the Department has written the Director, Federal Procurement regulations (FPR) staff, General Services Administration (GSA), requesting that the FPR be amended to include suitable contract clauses that would cover government-wide applicability of section 7(b).

The second issue has to do with the implementation of Indian preference by tribal contractors and grantees. The argument has been made that the scope of implementation of Indian preference by a tribe is modified by the self-determination aspects of P.L. 93-638 and that self-determination permits the tribes much more leeway than other contractors, grantees or Federal agencies. The P.L. 93-638 regulations do not address this issue and it is unclear how the Department should enforce these requirements and what its responsibility would be if a conflict arose between a tribe and an individual Indian or Indian organization claiming violation of Indian preference.

Another area of possible conflict concerns the use of Indian business firms. Although the issue is not unique to P.L. 93-638 concerns, some non-Indian firms have expressed dissatisfaction with this aspect of Indian preference. With the increased use of contracts and increased appropriations, this matter can be expected to be a source of additional controversies.

Another problem area deals with the interrelationship between the Indian Preference Act and the Intergovernmental Personnel Act (IPA). Indian tribes may now participate in the IPA by operation of P.L. 93-638. The

Indian Preference Act, as recently interpreted by a Federal court, requires Indian preference to be applied to all vacancies in the Indian Health Service. The IPA requires that an individual be reinstated at a position of the same grade and salary as was occupied before the IPA transfer was effected. If the IPA assignee is a non-Indian, the assignee can only be assured of being returned to his position of record since he would have to compete for any other IHS job and could not be so assigned unless there were no qualified and available Indian candidates. Therefore, the non-Indian IPA assignee's position cannot be back-filled except on a temporary basis. It would also be very difficult to hire someone at the professional level on a temporary basis, thus generally ruling out that possibility on practical grounds. The issue here is of a legal rather than regulatory nature.

7. What is the length of time for reimbursement after a tribe has submitted the necessary documentation for contract expenses?

Answer: Reimbursement procedures take an average of three to four weeks for receipt of the check by the contractor.

8. How many and what kinds of contracts have been entered into under the Buy Indian Act 1910 (36 Sta. 861) or any other non-93-638 Contract authority?

Answer: For fiscal year 1977, there were 664 contracts entered into under the Buy Indian Act, 466 entered into under other non-P.L. 93-638 contract authority. (See Attachment I)

9. What census data is used to determine the population base for section 104(a) monies? Is the census data updated to assure accuracy?

Answer: IHS does not use census data for the purpose of evaluating or awarding section 104(a) grants.

10. Are the tribal members who live off the reservation, but use the reservation services considered in 93-638 contracts and grants?

Answer: The service population under a P.L. 93-638 contract is the same as that which was receiving the contracted services directly from IHS. Any part of the service population not covered by a P.L. 93-638 contract, continues to be eligible and to receive services at the same level directly from IHS.

11. How many contracts have been declined or turned down because they involve multi-tribal populations? What were the problems encountered? How are the problems being dealt with?

Answer: The Indian Health Service has not declined to contract with any Tribe(s) for the assumption of any IHS-operated programs.

I hope the above information proves helpful in the review of our continuing progress in implementing the Indian Self-Determination and Education Assistance Act.

Sincerely yours,

Dick

Dick Warden
Assistant Secretary
for Legislation

Enclosure

ATTACHMENT I

THE FOLLOWING LIST REFLECTS IHS ACTIVITY FOR FY 1977

Contracts Awards by Area and Type		FIXED PRICE	RC	* C/R
ALASKA	- Buy Indian	37		
	Self-Determination			
	Other	120		2
ALBUQUERQUE	- Buy Indian	10		14
	Self-Determination			
	Other	77		2
ABERDEEN	- Buy Indian	139	204	80
	Self-Determination			
	Other	1		
BILLINGS	- Buy Indian	17		18
	Self-Determination	1		
	Other	12	56	
TUCSON	- Buy Indian	11		
	Self-Determination			
	Other	17		
PHOENIX	- Buy Indian	4		7
	Self-Determination	17		
	Other	11	40	2
PORTLAND	- Buy Indian	12	2	23
	Self-Determination			
	Other			
BEMIDJI	- Buy Indian	10		4
	Self-Determination			
	Other	9		
NAVAJO	- Buy Indian	5		2
	Self-Determination			
	Other	55		3
USET	- Buy Indian	40		1
	Self-Determination			
	Other	1		
OKLAHOMA CITY	- Buy Indian	22		2
	Self-Determination			
	Other	20	116	

Notes:

* RC = Requirements Contracts
C/R = Cost Reimbursement

"Other" covers authorities to negotiate contracts not included in Buy Indian (25 U.S.C. 47) or Indian Self-Determination (P.L. 93-638)

Chairman ABOUREZK. That is all we have to ask at this time. I want to express our thanks for your appearance here today and your response to questions.

Dr. JOHNSON. Thank you.

Chairman ABOUREZK. The hearing is adjourned, subject to call of the Chair.

[Whereupon, at 12:15 p.m., the hearing was adjourned, subject to call of the Chair.]

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT IMPLEMENTATION

FRIDAY, JUNE 24, 1977

U.S. Senate,
Select Committee on Indian Affairs,
Albuquerque, N. Mex.

The committee met, pursuant to notice, at 11.12 a.m. at the Hilton Inn, Albuquerque, N. Mex., Senator James Abourezk (chairman) presiding.

Present: Senator Abourezk.

Staff present: Alan Parker, chief counsel; and Kathryn Harris Tijerina, staff attorney.

Chairman Abourezk. The Senate Committee on Indian Affairs will come to order. May we have order in the hearing room, please.

The purpose of this hearing before the Senate Committee on Indian Affairs is to take testimony from tribal witnesses about problems they have experienced in the implementation of Public Law 93-638 and to receive any proposed solutions which those witnesses might want to offer.

I have an opening statement which I will not read, however I will place it in the record.

I also have here a prepared statement by Birgil L. Kills Straight, representing the Little Wound School Board in Kyle, S. Dak., which will be inserted in the record as well.

[The prepared statements referred to follow:]

page 244 blank.

OPENING STATEMENT
OF
CHAIRMAN JAMES ABOUREZK
FOR
OVERSIGHT HEARINGS ON IMPLEMENTATION OF P.L. 93-638, THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (TITLE I)

THE PURPOSE OF THIS HEARING BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS IS TO TAKE TESTIMONY FROM TRIBAL WITNESSES ABOUT THE PROBLEMS THEY HAVE EXPERIENCED IN THE IMPLEMENTATION OF P.L. 93-638 AND TO RECIEVE ANY PROPOSED SOLUTIONS THEY MIGHT OFFER.

THIS FIELD HEARING IN ALBUQUERQUE, N.M. IS THE SECOND STAGE IN THE COMMITTEE'S OVERSIGHT PROCESS. IT FOLLOWS AN OVERSIGHT HEARING ON JUNE 7 IN WHICH THE COMMITTEE HEARD THE TESTIMONY OF THE BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE ON THEIR PROGRESS IN INPLEMENTING P.L. 93-638. AS THE RESULT OF THIS TESTIMONY AND FURTHER STAFF ANALYSIS CERTAIN KEY ISSUES HAVE BEEN IDENTIFIED. TODAY'S TRIBAL WITNESSES HAVE BEEN ASKED TO ADDRESS THESE ISSUES IN DISCUSSING THE PROBLEMS THEY HAVE ENCOUNTERED EITHER IN TRYING TO CONTRACT UNDER P.L. 93-638 OR IN APPLYING FOR SELF-DETERMINATION GRANTS. WE ANTICIAPTE THAT ALTERNATIVE SOLUTIONS WHICH THE TRIBES PROPOSE MAY TAKE THE FORM OF AMENDMENTS TO THE ACT, CHANGES IN THE ADMINISTRATION'S REGULATIONS OR THE

ADOPTION OF DIFFERENT PRACTICES BY THE ADMINISTRATION. THE ONLY TESTIMONY WHICH WILL BE HEARD IS ON THAT PORTION OF THE ACT, TITLE I, WHICH DEALS WITH THE GRANTS FOR AND CONTRACTING OF FEDERAL PROGRAMS AND SERVICES TO BE RUN BY INDIAN TRIBES AND ORGANIZATIONS.

IN PASSING THE INDIAN SELF-DETERMINATION ACT, CONGRESS DECLARED "ITS COMMITMENT TO THE MAINTENANCE OF THE FEDERAL GOVERNMENT'S UNIQUE AND CONTINUING RELATIONSHIP WITH AND RESPONSIBILITY TO THE INDIAN PEOPLE THROUGH THE ESTABLISHMENT OF A MEANINGFUL INDIAN SELF-DETERMINATION POLICY WHICH WILL PERMIT AN ORDERLY TRANSISTION FROM FEDERAL DOMINATION OF PROGRAMS FOR AND SERVICES TO INDIANS TO EFFECTIVE AND MEANINGFUL PARTICIPATION BY THE INDIAN PEOPLE IN THE PLANNING, CONDUCT AND ADMINISTRATION OF THOSE PROGRAMS AND SERVICES. ISEC. 3(B)I". SINCE THE ACT WAS PASSED IN 1975, AND THE REGULATIONS PUBLISHED OVER 1 1/2 YEARS AGO, INDIAN PEOPLE THROUGHOUT THE NATION HAVE ENCOUNTERED PROBLEMS AND BARRIERS TO THE ASSUMPTION OF CONTROL OVER BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE PROGRAMS.

THIS IS AN IDEAL TIME TO HOD OVERSIGHT HEARINGS ON THE INDIAN SELF-DETERMINATION ACT. HAVING OPERATED UNDER THE BIA, IHS, REGULATIONS FOR OVER 1 1/2 YEARS SUFFICIENT EXPERIENCE HAS BEEN ACCUMULATED TO ENABLE US TO EFFECTIVELY EXAMINE THIS QUESTION BEFORE THE BUREAURATIC POLICIES BECOME SO ENTRENCHED AS TO BE IMMOVABLE. IN THESE HEARINGS THE SENATE HAS THE OPPORTUNITY TO REVIEW THE INTERPRETATIONS GIVEN THE ACT BY THE VARIOUS AGENCIES IN ORDER TO REDIRECT ANY POLICIES WHICH ARE FUNDAMENTALLY INCONSISTENT WITH THE INTENT AND THE PHILOSOPHY OF THE ACT.

ON THE BASIS OF THE ADMINISTRATION'S TESTIMONY IN THE PREVIOUS HEARING AND THROUGH FURTHER STAFF ANALYSIS, IT IS CLEAR THAT A VERY BASIC RESTRUCTURING OF THE AGENCIES, AS INTENDED BY CONGRESS, IS NOT OCCURING. AS INDIAN TRIBES ASSUME CONTROL OVER THE ADMINISTRATION AND DELIVERY OF THE WIDE RANGE OF SERVICES WHICH CONGRESS HAS DIRECTED THE IHS AND THE BIA TO PROVIDE, A NECESSARY EVOLUTION IN THE NATURE, ORGANIZATION AND STRUCTURE OF THESE AGENCIES SHOULD TAKE PLACE. INSTEAD, THERE APPEARS TO BE ONLY A MINIMAL ACCOMMODATION BY THE AGENCIES AND A NOMINAL CHANGE IN THEIR STRUCTURE.

CONGRESS INTENDED THE SELF-DETERMINATION ACT TO BE A MECHANISM THRU WHICH TRIBES COULD TRANSFORM THEIR RESERVATION COMMUNITIES AND ALTER THE DESTRUCTIVE DEPENDENCY RELATIONSHIP WHICH THE BIA HAS FOSTERED FOR SO MANY GENERATION.

THE PURPOSE OF THIS HEARING TODAY IS TO HEAR FROM SOME KEY TRIBAL LEADERS REGARDING THEIR CONCLUSIONS ON THE MANAGEMENT OF PL 93-638 AND TO LISTEN TO THEIR RECOMMENDATIONS ON HOW CONGRESS SHOULD CHANGE THE LAW OR DIRECT THE AGENCIES TO CHANGE THE WAY THEY ADMINISTOR THE LAW.

Submitted by: Birgil L. Kills Straight
June 24, 1977 Secretary
Little Wound Sch Bd

STATEMENT ON PUBLIC LAW 93-638

BY

LITTLE WOUND SCHOOL BOARD

Kyle, South Dakota 57752

The Little Wound School Board is a Tribal Organization under the Oglala Sioux Tribe established by Tribal Resolution 70-51 and given contracting authority in educational matters by Tribal Resolution 76-06. The Board has formerly operated by a Buy-Indian contract for Special Education during the 75-76 School year and is currently operating a PL93-638 contract for the design of a new high school facility.

Although the Board first voted to contract the operation of the Little Wound School in December, 1973, because of lack of staff, the uncertainties of 20 BIAM 6 and the developing of PL93-638 procedures, the Board only submitted a proposal to contract the operation of Little Wound School on March 21, 1977. Our statement is based on experience with our previous and current contracts, the review of our current proposal and observation of other contracts both education and different programs.

We wish to keep our statement succinct and to the point. Therefore we will use the following format:

a. Subject
b. Observation
c. Recommendation

If there is further clarification needed we would be happy to elaborate on any of the subjects mentioned or on any other subject the committee would be interested in.

First, we would like to state that we feel The Indian Self-Determination Act (PL 93-638, Title I) is an invaluable tool in enabling Indian people to take control of some of the services which affect our lives and to thus attempt to make these services more efficient, effective and relevant. Especially in education, we believe local control will lead to a vast increase in program results. We view PL 93-638 as a step in the right direction, but we also realize the battles of sovereignty and jurisdiction must still be fought. We feel control of education is an essential ingredient in being able to wage these battles successfully.

The key to the success of PL 93-638 itself is in being able to get the massive "iron horse" of the bureaucracy to move smoothly in the right direction and with appropriate speed. The following comments we have will hopefully aid the Committee in facilitating this.

1. a. Subject: Termination

b. Observation: Although "self-determination" is a valid term throughout the world for peoples struggling to control their own destinies, in this instance it has led to semantic games involving the policy of "termination." Even though the law states that contracting does not affect the unique Federal/Indian relationship, some Tribal leaders and Bureau personnel foster the idea that self-determination is concealed termination.

c. Recommendation: This issue is quite complex, but a strongly worded explanation of Title I, Section 110 (2) of the Act would help. Also a statement by Congress or the Bureau that Contracting will not lead to a diminution of services due Indian people.

2. a. Subject: Jurisdiction

b. Observation: Another point often brought up by people opposed to, or unsure about, contracting is the question of whether contracting will lead to state jurisdiction. This point is tied in with the termination issue and affects especially contracting in the areas of education and law and order.

c. Recommendation: A statement in the regulations or guidelines that contracting itself in no way leads to state jurisdiction and, in most cases, would actually strengthen Tribal jurisdiction would help alleviate fears. The Committee might want to have an attorney look into the jurisdictional implications of contracting further to be be sure and protect Tribal interests.

3. a. Subject: Local Personnel

b. Observation: The most determined opposition to contracting, when it is present, usually comes from BIA employees at the most local level. When these BIA employees are Indian people from the community itself, this creates a great deal of political activity. Many local BIA people are misinformed by higher BIA personnel or are fearful of their job security.

c. Recommendation: That the BIA attempt to convey contracting in a positive way, especially to the most local level employees. The Tribe or Tribal organization can convey knowledge but when people hear it from their superiors it carries more weight. This BIA information campaign could be conducted through memos, newsletters, staff meetings, etc.

The Bureau should convey to its employees that contracting at the discretion of the Tribe is the policy of Congress and of the BIA itself. It should also convey the rationale behind PL 93-638 and the tools and personnel options provided to make for harmonious transition.

4. a. Subject: 1834 Act

b. Observation: The 1834 Act is an invaluable tool for the early stages of contracting, especially for a BIA school. Experience has shown that when employees are given the 1834 Act option (at the Tribe's discretion) staffing becomes much easier in the first years of contracting and opposition and fears are lessened. There has been some question as to the applicability of the 1834 Act to portions of school staff; i.e. either all or nothing.

c. Recommendation: At least in school contracting, the use of 1834 Act should be clarified and set up so that the Tribe or Tribal organization can offer direct hire or 1834 Act assignments in any combination that is deemed desireable. A good example of this is Section 100-29 of the Loneman School Contract.

5. a. Subject: Reduction in Force Letters

b. Observation: We realize that the guidelines call for the sending of Reduction in Force letters to employees possibly affected by contracting, but in both the Oglala Sioux Tribe Law & Order Contract and the Little Wound School Contract, the content of the letters tended to be confusing and negative to BIA employees. The letters raised uncalled for fears in many employees minds.

c. Recommendation: The Bureau should review contract proposals carefully, especially the staffing plan, and write their RIF letters to reflect the reality of the situation. In other words to show people the exact possibilities of their being bumped rather than a blanket alarm.

6. a. Subject: Title I (ESEA)

b. Observation: The Little Wound School Board has inquired into the contracting of Title I (ESEA) monies and have been told that these are not covered by PL 93-638 because they are "flow through" funds from HEW. The Unified School Board of the Oglala Sioux Tribe currently contracts Title I under Buy-Indian Act, but they have expressed the desire to contract it under PL 93-638, since PL 93-638 is a much more effective structure for contracts between Tribes and the BIA. PL 93-638 facilitates the Tribal obtaining of a contract, operations of it and relations with the Bureau, while Buy-Indian leaves things up to the whims of the BIA.

c. Recommendation: A clarification of the regulations, or an amendment to the law if necessary, should be made specifying that Title I and any other monies that flow through the BIA are contractable under PL 93-638.

7. a. Subject: BIA Role

b. Observation: There is a basic problem with the 638 regulations in the roles they set up for the BIA. BIA personnel are advocates for the Government in terms of negotiating for the Government and determining declination issues, and at the same time are supposed to provide technical assistance to Tribes. Even on paper this is a schizophrenic relationship, and, in reality, most of the Bureau employees we have dealt with take their "advocates for the Government role" the most seriously. It sometimes seems that every step of the way in the contract process is like pulling teeth and at no time is help offered spontaneously or information volunteered.

c. Recommendation: The BIA superiors must communicate to employees all along the line what their roles are in terms of contracting. These roles should also be discussed with and disseminated to Tribes. It might be necessary for certain employees to be designated as Devils advocates (or advocates for the Government) and others as assistors of Tribes.

As important as clarifying roles and communicating the letter of the law is the necessity to impart the spirit of the law which is that once a Tribe decides to contract, the Bureau will do everything it can to facilitate the contract and try to make the operation a success. Of all the subjects we have discussed so far this is one of the most important and could very well spell the success or failure of contracting.

8. a. Subject: Grant Program

b. Observation: Whoever drafted the initial legislation for 638 knew the reality of Tribal operations, and the inclusion of the grant programs one of the strong points of the law in terms of fostering Tribal Control. Resources to strengthen Tribal management systems and to prepare and follow-up on contracts are a necessity if contracting is to become a reality. The grant program provides some of these resources.

c. Recommendation: The grant program should be continued and even expanded. Adequate monies should be provided over a sufficient period of time so that Tribes can adequately develop systems, evaluate BIA programs, and prepare and administer contracts. We would especially recommend a look at the Oglala Sioux Tribe's use of the grant funds as a possible model worthy of dissemination.

9. a. Subject: Adequacy of Budgets

b. Observation: As Peter McDonald, Chairman of the Navajo Tribe, testified a number of years ago, contracting is ok as far as it goes, but the questions of adequate funding and Tribal input into the budgetary process are key. The proposed new regulations even contained (or contain) a provision that provided for declination based on lack of funds. Experience has shown that many of the previous BIA contracts have failed because of inadequacy of funding. Some Tribes feel that if they contract programs the Bureau will be less motivated to fight for the money. The complexity of the Government budgetary process is such that the bureaucracy tends to maintain itself, but what of Tribally/contracted programs?

c. Recommendation: Tribes must be systematically involved in the request and appropriation process at the highest level as well as the allocation process at the most local level. Some assurance must be given to Tribes that contracted programs will continue to receive adequate funds. We don't have a quick answer to this problem, but feel it is one of the major items to be addressed.

10. a. Subject: Direct Funding and Formula Funding

b. Observation: The BIA Office of Education is currently developing the concept of formula-funding for BIA and contract schools. We support the concept of a formula as long as it is developed with contract school input and takes into account the numerous factors affecting the cost of education. A second concept is direct-funding of school from the Washington Office. We strongly support this and feel it is almost a necessary component to any formula-funding system. Area Officers are strongly opposed to direct-funding, since it removes their ability to play money games.

c. Recommendation: A realistic formula should be developed for funding BIA and contract school. Representatives of contract schools should be involved in the actual developing of the formula (perhaps two people recommended by CICSB.) Once the formula is developed, the basic funding for school should come on an entitlement basis directly from Washington to the Schools.

11. a. Subject: Indirect Cost

b. Observation: The Little Wound School Board recently received a letter from the Aberdeen Area Office that there were no Indirect Cost funds available for our school operations contract. This is a severe blow since it is unrealistic to expect to operate a school contract without indirect costs to take care of the "hidden costs" the BIA absorbs but doesn't show in the education line item. We feel this letter reflects an attitude of Area Office personnel which would just as soon deny a contract. We are sure that there are funds to cover the Indirect Costs somewhere in the Bureau and that the Area Office should try to obtain these before blankly telling us there are no funds.

c. Recommendation: For now, a directive from Central Office should be sent to Area Offices telling them put a priority on placing excess funds into contract requests and explaining to them how to obtain funds through the Central Office, if available.

12. a. Subject: Payments

b. Observation: Although we should be eligible for the letter of credit system on our school operations contract, we are concerned about the voucher payment system on contracts. Our experience with a Buy-Indian Special Education Contract a year ago was very negative and we have heard many incidents from other contract schools. Our vouchers would be at the agency or Area with each office blaming the other so that payment would take six to eight weeks instead of the supposed four. Even with an advance and the smallness of the contract we had cash flow problems.

c. Recommendation: Procedures and strict time limits should be set for the processing and payment of reimbursement vouchers.

13. a. Subject: Application Processing

b. Observation: After the submission of our school operations proposal in March which we took pains to have meet the applicable regulations, the agency area proceeded to violate just about every procedure outlined in the regulations. No letters of receipt were even sent from the Agency or Area to the Board and the thirty and sixty day time limits were both surpassed. The Board could excuse the Bureau because of workload or ignorance, but not once did any Bureau person contact the Board to relay delays, problems etc. All information had to be gained by the Board seeking it out.

c. Recommendation: Perhaps Bureau personnel should be reminded that they too must follow the regulations, they are always quoting to Tribes.

We have tried to cover some of the topics we feel are important to the successfull implementstion of PL 93-638. We have not belabored "horror" stories of Bureau incompetence or intransigence, because we know these are well documented and oft rerepeated. However, in closing the Board would like convey a feeling or spirit. Up to now all our dealings with the BIA have been of an adversary nature, not by the Board's choice, but by the attitude of Bureau personnel. Except for Central Office and a few people in the Agency or Area, the posture of the Bureau has been hostile or, worse, bureaucratic cinfusion. At almost every step the Board has had to rely on lawyers, consultants and a lot of its own time to settle even routine matters. Aside from all the mechanics, if a spirit of assistance and cooperation with Tribes could be fostered among Bureau personnel, this would go a long way to facilitating the implementation of PL 93-638.

Chairman **Abourezk.** Before I call the first panel of witnesses, I want to make a couple of brief comments. I won't have a chance to speak to the convention this weekend because I have other places to which I have to go.

But I do want to talk just briefly about the new Senate Select Indian Affairs Committee. I think you probably met the staff people who are sitting up here with me.

This is a kind of historic occasion because there has not been a full Committee on Indian Affairs in the Senate in recent times. Within memory, it has always been a subcommittee of the Interior Committee. In the Senate reorganization we argued that the conflict of interest was too great within the Interior Committee because too many members had other interests—irrigation, land management, and so on—and the Indian people always came out on the short end of the stick.

The same argument is true, of course, having the Bureau of Indian Affairs within the Department of Interior. You have all heard the arguments. You have all made them. We are going to make an effort, according to the recommendation of the American Indian Policy Review Commission, to separate the Bureau of Indian Affairs out of the Department of Interior to, at least, end the conflict.

I think progress has been made in the last few years and that the Indian people are getting their act together much more than they have in the past.

The other element that I consider to be extremely important is who the President names as Assistant Secretary for Indian Affairs.

Now, the position of Commissioner has been upgraded to Assistant Secretary. The nomination—whoever the President nominates—will have to come through the Senate Select Committee on Indian Affairs for confirmation.

Obviously, that gives the Senate Committee a great deal more power than it has ever had before in this respect. I think that is appropriate because of the extreme importance I attach to whoever will be the Assistant Secretary.

I believe, as Secretary Andrus stated when he was being confirmed, when he was first Secretary of Interior, I believe the tribes themselves ought to be able to pick who that person would be. I go along with that concept.

At the outset, the Department of Interior interviewed a number of candidates for the position of the Assistant Secretary. The result of the straw poll or the survey that the Interior Department took indicated that your national president of the National Congress of American Indians, Mel Tonasket, was the overwhelming choice over a whole field of candidates. Now, as I understand it, two names have been sent from the Interior Department to the White House as being people qualified to fill that position.

One name is Forrest Gerard. The other name is that of Mel Tonasket. If the Indian people are interested in progress in Indian affairs, are interested in their own future, the future of their children and their grandchildren—especially in this meeting today of the National Congress—if you don't make your feelings known on who you want as Assistant Secretary, then the fault lies with you and not with anybody else.

I have stated before that I am willing to go to the wall to try to help get what the Indian people want. In that regard, keeping my promise, I have done that so far as I can to this date. I have notified the White House, the Department of the Interior, that since your president, Mel Tonasket, is the overwhelming choice, that I, personally, will do everything I can to prevent anybody else from being Commissioner or Assistant Secretary and to promote the candidacy of the choice of the Indian people and that is Mel Tonasket. [Applause.]

You have to remember that confirmation has to come through the Indian Committee and if the choice is somebody not chosen by the tribes or majority of the tribes, that confirmation is going to have very rough sledding, I can guarantee you that. [Applause.]

Now, the first panel of witnesses today on Public Law 93-638 consists of Joe De La Cruz, who is president of the National Tribal Chairman's Association, Mel Tonasket, president of the National Congress of American Indians, and Peter MacDonald, chairman of the Navajo Nation. I understand that Peter is running late. Also, Al Trimble, chairman of the Oglala Sioux. Jonathan Taylor of the Eastern Cherokee Tribe and Aaron Forrest of the Pit River Tribe have been requested to join the panel, is that correct?

Are you [Joe De La Cruz] going to monitor the panel?

STATEMENT OF JOSEPH B. DE LA CRUZ, PRESIDENT, NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION; AND PRESIDENT, QUINAULT INDIAN NATION

Mr. De La Cruz. Senator Abourezk, I will lead off with the statement of the National Tribal Chairman's Association. We are waiting for some of the other papers for some of the other panel members.

Chairman Abourezk. The prepared statement will be made a part of the record.

[The prepared statement of Joseph De La Cruz, president, National Tribal Chairman's association follows:]

TESTIMONY OF JOSEPH B. DE LA CRUZ
PRESIDENT, NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION
& PRESIDENT, QUINAULT INDIAN NATION
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE, ALBUQUERQUE, NEW MEXICO
JUNE 24, 1977

Mr. Chairman,

On behalf of the National Tribal Chairman's Association, I want to express my appreciation at your invitation to participate in these important hearings. I was elected President at NTCA's annual convention in Atlanta just over a month ago. In my remarks to that convention, I pledged to speak forcefully on the major issues affecting Indian people. This hearing focuses on one such issue--the implementation of the Indian Self Determination & Education Assistance Act. Let me say at the outset that I, along with other tribal chairmen, greeted the passage of that Act in 1975 with hope that Indian tribes finally would be able to administer their new programs without confusion and conflict. I cannot report to you today that we still have such hope. The regulatory scheme the Bureau of Indian Affairs has created is unclear and in many instances, unwisely administered. We have a number of recommendations: the first is that the functions and present authority relating to contracts or grants under this Act should be placed either in the Area or Agency office--this would eliminate the duplication of effort and delay now inherent in the present review process.

In my view, the Superintendent at the Agency level has very limited responsibility under the Act. I recommend that the Agency office either be excluded entirely from the contracting phase of the operation, or that all reviewing and approving authority rest at the Agency level to the exclusion of the Area office. We must eliminate one or the other level or review.

In this connection, I am also recommending the elimination of the position of

Contracting Officer's Representative (COR) so that tribes have a direct relationship with a Contracting Officer who has both authority and the responsibility to perform contracting functions.

These inefficiencies have been my main source of frustration--the inordinate number of people involved in every type of transaction at all levels. We must reduce the number to an absolute minimum. The tribes should deal directly with the Contracting Officer with all related responsibilities and authorities.

A major factor in the inefficiency and frustration is the lack of familiarity and competence of Bureau employees in dealing with their own contracting guidelines. I am submitting , for the record, an example of the misinformation conveyed by the Bureau in one recontracting negotiation--wrong times, wrong places, wrong restrictions. I am recommending a comprehensivè training program for contracting personnel with a follow-up evaluation program to ensure that all procedures are fundamentally understood and operating.

My fourth point concerns the frustration of the purposes of the legislation itself. The Act directs the Bureau to transfer to the tribes, through contract, program operation, decision-making authority, and priority setting. This is implementation of self-determination. The BIA regulations and procedures, however, tie the entire contracting process into pre-existing Bureau functions, operations and its line item budget. It is Bureau structure and thought which continue to dictate the shape and content of tribal programs.

The Bureau rewards-through contracts- those tribes most willing:

1) To operate programs identical to Bureau programs
2) Not to displace Bureau personnel
3) To contract with the Bureau to run programs for them; and
4) Not to operate outside the explicit line item categories of the agency bureau budget at the previously Bureau-determined funding level.

It is this last point especially which frustrates tribal efforts to take new directions and set new objectives as contemplated in the 638 regulations. This is the inevitable squeeze play with the tribes trapped between inflexible budget lines and amounts.

We recommend a thorough going review and revision of BIA budgeting and fund allocation to reflect congressional intent, the revised functions of the Bureau, and the needs and priorities of the tribes.

Small tribes, especially in California, experience special problems arising from Band Analysis. In multi-tribal agencies, such as Central California, tribes cannot practically contract for BIA programs because such contracts jeopardize the services available to other tribes. In such situations, Band Analysis is a waste of time. Zero-based budgeting is needed for fiscal 1978 if tribal needs are to be met. Grant funds from 638 should not be included in the Band Analysis because this means allocations are based on formula rather than on individual tribal needs.

Budgeting should be accomplished through careful BIA analysis and documentation of agency objectives-objectives approved by an advisory committee of tribal chairmen from the Agency tribes. Likewise, tribal needs and objectives should be identified and documented to the Advisory Committee. The BIA budget would be developed upon the basis of reasoned objectives and established needs.

Finally, training and technical assistance monies and costs of contracting should be appropriated at all levels. BIA and IHS should be required to provide real technical assistance to tribes. P.L. 638 funds should not be used simply to pay the salaries of Bureau personnel.

The historic legislation to introduce vast and sweeping changes to the BIA, has impacted Indian tribes. There are new forms and procedures, new training sessions and representatives to the tribes and a contracting language that addresses self-determination. But in reality, the BIA maintains the same functions, operations, programs and personnel with little perceptible change. The only real change is the increasing frustration of tribes as they attempt self-determination and find themselves once again jammed into the total BIA system.

The entire 638 program has certainly become an extraordinary example of the institutional power and capacity of some Federal Bureaucracies to preserve and protect themselves against the will of the people they serve and directions of Congress. It also appears to be a system of planned failure.

The Bureau should be performing its responsibilities as a responsible, efficient conduit for Federal funds allocated to implementing governments to meet Federally-recognized goals and locally-determined priorities.

Thank you for giving me this time this morning to discuss our views on this Act.

Mr. **De La Cruz.** I am speaking from experience. My own tribe contracted in 1966, 1976, and 1977 over $2.9 million of Bureau contracts—17 contracts—and it has been a very frustrating experience. Thank you.

Chairman **Abourezk.** Thank you, Joe. Before I ask a question of the two of you, I would like to make an introduction. There are a lot of distinguished guests in the audience today but I want to introduce one in particular that a lot of us haven't seen for quite some time, at least those of us who are living now in Washington: Senator Fred Harris. Fred, where are you? [Applause.]

I didn't recognize him with his cowboy hat on. [Laughter.]

You know, he has gone native here in Albuquerque. We would like to welcome you to the committee, and are very glad to see you here.

Joe, if I might ask a question, when we had hearings in Washington on Public Law 93-638 and the Bureau came in to testify as to their progress on it, they had spent money for which they could not really account. They didn't know how much of their funds were allocated out for 638 management—for self-determination management. They have written enough regulations to date that if you stood on the stack of regulations that they had, you would get high-altitude nosebleed. [Laughter.]

They were unable to really clearly distinguish for the committee exactly how much progress had been made in turning over the self-determination aspects to the Indian tribes.

Mr. De La Cruz, are you an official in your own tribe?

Mr. **De La Cruz.** Yes, Senator; I am president of Quinault Nation.

Chairman **Abourezk.** All right. And you are also the newly elected president of National Tribal Chairman's Association and that is a welcomed change and my congratulations on it.

Mr. **De La Cruz.** Thank you. [Laughter and applause.] I don't know if it is a welcomed change for me. [Laughter].

Chairman **Abourezk.** You are going to have to suffer with the rest of us now. In your experience, in the positions you held and you are now holding: What is your view of the overall progress made by the Bureau in turning over contracting and turning over self-determination to the tribe? Just a frank assessment.

Mr. **De La Cruz.** From my experience, I feel that the progress has been very, very slow. I feel very sorry for some of the tribes that don't have their own staffs to be fighting their way through the layers and layers of regulations and the channels that contracts have to go through, and the desks they go over.

It happens that I have a very good staff with my tribe and they have to practically spend most of their time back and forth between the agency and the area to actually kick those contracts out of there. I feel like tribes that don't have people on staff like that, it would be impossible for most of them to get a "638" contract out.

Chairman **Abourezk.** Now, I think one measure, personally, of the progress of this legislation and the intent of the legislation is whether or not the personnel of the Bureau has diminished or increased as a result of turning over contracting to the tribe. It is another way to measure it.

If I recall the testimony of the Bureau, they claim to have turned over a lot of contracting to the tribes. They could not testify as to one person on a personnel level below that of what they had before "638" was passed. In other words, they haven't diminished the number of BIA personnel, even though they claim that a lot of this work is now being done by the tribes. Do you agree or disagree that that is a good measurement?

Mr. DE LA CRUZ. That is a good measurement, and where I come from—western Washington—we deal through an agency and a subagency, and many of the tribes have been contracting Buy Indian contracts, and when "638" passed, they went into "638" contracts. In reviewing the personnel level at the subagency in Hoquiam, the western Washington agency in Everett, their personnel hasn't declined one bit.

Chairman ABOUREZK. I think they even admit that. That hasn't declined nationwide, and that is a good indication of your own experience.

Well, that is all I have right at this point. Who do you want to testify next?

Mr. DE LA CRUZ. President Tonasket.

Chairman ABOUREZK. Mel, welcome to the meeting.

STATEMENT OF MEL TONASKET, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. TONASKET. Thank you very much, Senator. I wasn't nervous when I got here, but after your opening remarks, you have got me shaking. [Laughter.]

I thank you for those remarks. It is my pleasure to be here both as president of the National Congress of American Indians and to be the spokesman for my tribe—the Colville Confederated Tribes.

The purpose of my testimony today is to describe problems and tribal experience with the BIA-implemented Indian Self-Determination and Education Act.

The general problem has to do with balancing control and authority to achieve a greater tribal role to fulfill the intent of the original legislation.

I have made a very brief outline of the problem and the recommendation, and went on down.

Problem No. 1: The present allocation system is based entirely on tribal population. The smaller tribes need financial support to match the size of problems facing them. Census figures are mainly based on Census Bureau information which is, at best, only qualified estimates. The consequence of this system is that smaller tribes are unduly burdened by a shortage of funds.

Our recommendation is: Contract and grant negotiations must include a measurement which emphasizes the magnitude of a problem and a tribe's justification for concentrating funds.

Problem No. 2: 638 grant administration funds are presently being used to fund all contracting staff. This creates dependence by administering staff on the same kinds of funds being negotiated by the tribes. Contracting staff therefore have a vested interest in the amount of funds which will go to tribes.

Our recommendation is: Place all contracting staff under BIA administration funding outside of 638 funding.

Problem No. 3: The enactment of 638 was to make it easier for tribes to contract. Under the present guidelines and regulations, more paperwork is required than the old "Buy Indian" contracts; contract renewals require repeating the initial process, placing an undue burden on the tribe each time.

Our recommendation is: The tribes should be permitted to enter into a contract agreement by merely adopting a resolution with a memorandum of agreement. Contract renewals should be accomplished through simple adoption of a resolution or a memorandum of agreement, similar to the Buy Indian contracts.

Problem No. 4: The BIA budgeting process takes care of raises and promotions for BIA-administered programs but makes no provisions for tribally contracted programs. Cost of living and inflation rapidly reduce the impact of status contract dollars within the tribe while the BIA retains more and more funds.

Recommendation: That all 638 contracts and grants must make provision for annual inflation and cost-of-living increases at the tribal level.

Problem No. 5: 638 funds are indiscriminately lumped with BIA administration and general funds. The consequence is that the BIA is unable to account for expenditures or demonstrate flexibility in negotiations with tribal governments. BIA negotiators tend to bully tribal negotiators into accepting lower funding because of the vaguely defined funds.

Our recommendation is to clearly separate 638 funds from other BIA funds and provide monthly breakdowns to tribes and BIA administration.

Problem No. 6: When a tribe contracts a position from the BIA, the slot once occupied is eliminated. Understaffed program elements elsewhere in the agency remain understaffed while a contracted program is reduced. The agencies' capabilities are eroded ultimately at the expense of the tribes. This is particularly true in multitribal agencies.

The recommendation that comes from the Colville is: Contracted program personnel should be placed in the reserve or in a bank, and their slots should be shifted to other program elements to increase capabilities in noncontracted areas. I might ad lib in here that many reservations, many agencies, some of the key positions that tribes rely on have been taken away from the tribes and have been vacant for a number of years, and some of those, we do certainly need and this might be a way to replace those vacancies.

Problem No. 7: BIA 638 regulations have created a complex layering of administration for contracts which delays completion of contracts. Tribes are forced to wait long periods of time before getting completed contracts. This creates delays in program startup and confusion.

Our recommendation is to eliminate excessive bureaucracy by placing sole responsibility at the agency level. The superintendent should have authority to approve all 638 contracts.

Problem No. 8: The creation of new positions relating to contracting tends to concentrate at the area level. This increases the already topheavy administration at the area level while the agency is unable to properly deal with the contracts.

Our recommendation is: New positions should be created at the agency level only. Tribes, themselves, should do monitoring and evaluation of performance.

Problem No. 9: According to the Indian Self-Determination Act, a negotiating process between a tribe and an agency is required. In reality, negotiation never actually occurs because most programs have predetermined budgets resulting from the band process. Funding levels are not negotiated. Within funding constraints, services required are negotiated.

Recommendation: BIA negotiators must be directed to negotiate minimum values of a contract without initial consideration of an uppermost limit. Cost must be understood to vary from tribe to tribe.

Problem No. 10: The last that I will present to you is that: Delays in contract reimbursement creat undue burdens on tribal governments when combined with no provision for startup funds.

And our recommendation is that: Allocate all contracted funds to contracting tribe at the beginning of the program. Agency officials can periodically monitor and evaluate the progress of the project throughout the contract period.

I will use my tribe as an example. Talking to Joe, I'll bring up his. My tribe is a half million dollars into their own money funding these contracts because we couldn't get the area office reimbursements to our expenditures.

A half a million of dollars out of your account loses you a heck of a lot of interest, and as that goes on, it is ever increased.

President De La Cruz related the same sort of problem on his reservation of about a fourth of a million dollars that went into their own funds and cost them. Now, the small tribes who have no money to back up on, I don't know how they can even get into contracts. So we think that they should get the lump money at the start and monitor it through and help them carry it out with proper technical assistance which, right now, the Bureau, I think, don't have right now anyway. Thank you.

Chairman ABOUREZK. Thank you, Mel, for the excellent testimony. Peter MacDonald is here with us now, Joe.

Mr. DE LA CRUZ. Mr. Chairman, Mel mentioned the cost and burden on the tribe, and I forgot, I submitted my tribal statement for the record with the attachments of the problems as they flow to the tribal level—to the area agency. I stated my tribe has 17 contracts for fiscal year 1976 and 1977 contracts on indirect costs. We have got 16 contracts on indirect costs to straighten out. We still have 11 we are trying to straighten out.

And those indirect costs represent $274,000. That is just the indirect costs. That is not counting the 3 or 4 months of delay in reimbursement of the voucher that my tribe is having to carry because of these delays within this contracting.

With your permission, Senator, I would like to have my prepared tribal statement entered into the record.

Chairman ABOUREZK. It is so ordered.

[The prepared statement of Joseph De La Cruz, president, Quinalt Indian Nation, follows:]

TESTIMONY OF JOSEPH B. DE LA CRUZ, PRESIDENT OF THE QUINAULT INDIAN NATION BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

The following comments and recommendations regarding the implementations of Title I of Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) and the resulting Procedural Guidelines, 25-CFR-271 April 1977 Revised, are for your consideration and action. A more detailed description of each recommendation follows along with appropriate attachments.

In summary we are presenting four recommendations.

(1) Functions and authority related to contracts or grants be assigned exclusively to either the Area or Agency office.

(2) BIA personnel receive additional training in the intent and implementation of PL 93-638, and a comprehensive outside evaluation be made of the impact of PL 93-638 on both the BIA and tribes with recommended corrective action as necessary.

(3) The position of Contracting Officer's Representative (COR) be deleted and that tribes have a direct relationship with a Contracting Officer who has both authority and responsibility to perform contracting functions.

(4) The entire process of Bureau budgeting and allocation of funds be revised to reflect the intent of the legislation and the changed operations of both the BIA and Tribes.

The language of the PL 93-638 indicates that it was the intent of Congress that a substantial change in the structure and functions of the BIA should take place. However, despite the enabling legislation, the Bureau has developed implementing regulations and procedures that are nothing less than planned failure. The Act directs the Bureau to transfer--through contract--implementation operations, decision-making authority regarding programs, priorities, etc., to the tribes. That is operationalizing the principle that the tribes have the right to exercise self-determination in their receipt of Federal funds. This legislation is parallel to that establishing the relationship between many Federal agencies and state governments.

However, the BIA implementing regulations and procedures--while couched in the terms of the act and issued in the guise of implementing the act--in fact, undermines the entire intent of the legislation. The Bureau quite simply issued, for the Bureau, but actually to tribes, regulations that tie the entire process to the previously Bureau-developed functions, operations and line item budget of the Bureau rather than the goals of the Legislation.

The language in the regulations and procedures speaks to Tribal priorities, decision-making, tribal control and programming; but, the regulations actually base decision-making and contracting of funds on the previous structure, functions, and operations of the Bureau, not the Tribes. The Bureau has taken legislation designed to strengthen the anatomy and authority of Tribal Governments to govern themselves, and implemented regulations and procedures rewarding through contracts those tribes most willing to:

(1) Operate programs in a manner identical to the Bureau operated programs,

(2) Not displace any Bureau personnel,

(3) Contract with the Bureau to run programs for them, and,

(4) Not operate anything outside the explicit line item categories of the agency bureau budget at the previously Bureau-determined level of funding.

The implications of these first three points are quite straightforward. However, the fourth point is perhaps the one with the broadest most difficult issues for tribes attempting to develop and contract for their own programs.

It is this point that becomes the inevitable squeeze-play when tribes attempt to actually exercise the new directions in the 638 regulations. The Bureau budgets are obviously established to maintain and protect the existence and operation of Bureau personnel and programs, not Tribal programs. In fact, in this process where is the Congressional directive and priority of self-determination?

The historic legislation to introduce vast and sweeping changes to the BIA, has impacted Indian tribes. There are new forms and procedures, new training sessions and representatives to the tribes and a contracting language that addresses self-determination.But in reality, through it all, the BIA goes on about its maintenance of the same functions, operations, programs and personnel with hardly the smallest perceptible change. The only real change is the increasing frustration of tribes as they attempt the process of self-determination and find it once again forced into the total BIA system.

The new legislation and the BIA-developed rules, regulations and method of implementing PL 93-638 are certainly extraordinary examples of the institutionalized power and capacity of some Federal Bureaucracies to preserve and protect themselves against the will of the people they serve and directions of Congress.

The Bureau should--though far from the current realities--be performing in a manner parallel to other federal agencies and regional operations as dealing with state and sometimes local governments, acting as responsible, efficient funding conduit for Federal funds allocated to implementing governments to meet Federally recognized goals and locally determined priorities.

We, therefore, submit the following recommendations to simplify and expedite the process of implementing PL 93-638:

1. The Agency Superintendent has, in my opinion, very limited responsibility under PL 93-638 and no authority other than signing off on DI-1, obligating contract money. I recommend that the Agency office either be excluded entirely from the contracting phase of operation, or that all reviewing and approving authority rest at the Agency level to the exclusion of the Area Office. The latter recommendation being more favorable generally to the tribes because of geographical location advantages.

2. It has been my experience that very few if any Bureau personnel are familiar with PL 93-638 contracting procedures either on the Agency or Area level as so specified under 25-CFR-271 April 1977 as well as a reluctance to change. I

recommend, therefore, that Bureau institute a training program for their contracting personnel along with a follow-up program designed to ensure that all the procedures contained therein are fundamentally understood and in operation at least.

3. My main source of frustration with the Bureau has been with the inordinate number of people involved in every type of transaction at all levels with its associated interdependence and ambiguity which now has been added on to with the introduction of the Contracting Officer's Representative (COR). I recommend that the Bureau appoint specific individuals at their Agency or Field Office, whichever is closest geographically to each tribe or contracting organization, to act exclusively as the CO with all related responsibilities and authorities in contracting and that the contracting organizations deal directly with them. Adoption of this type of procedure would, in my estimation, reduce the amount of paperwork and delay through eliminating the ambiguity of responsibility that currently exists while centralizing the channels of their bureaucracy.

4. The entire process of Bureau budgeting and allocation of funds--all Bureau funds--be revised to reflect the intent of the legislation, the revised functions of the Bureau, and the priorities and functions of the tribes.

Attachments:

1. Current functions of the Agency Superintendent under Procedural Guidelines 25-CFR-271, April 1977.
2. Current levels of expertise of Bureau personnel related to PL 93-638 and 25-CFR-271.
3. Current BIA review procedures in respect to contract applications, amendments or recontracting.
4. Implications and examples of the current BIA Budgeting System.

1. Current function of Agency Superintendent under Procedural Guidelines on 25-CFR-271 Indian Self-Determination and Education Assistance Act, April 1977 Revised.

The following Table summarizes explicitly the function of the Agency Superintendent under the current guidelines while all other functions, authorities and responsibilities not listed are retained exclusively by the Area Director by the Commissioner in contracting operations.

Area Superintendent Responsibilities and Authority

Area of Responsibility and Authority	Extent of Responsibility and Authority
1. Request for Waiver of Federal Regulations p. 2-27.	Forward request to the Area Director or Commissioner.
2. Request for information "Access to Bureau Records" p. 4-5.	Must provide information subject to limitation during application stage. All other cases after application, no specific instructions regarding procedures except for "full access to Bureau information."
3. Procedures (Tribal Request to change the use of allotted or allocated funds) p. 7-5	Advisory only to Area Director and tribes.
4. Bureau's Review of Contract Application Superintendent's Review and Action. p. 8-1.	Advisory only. Procedural steps: a. Must determine if the proposed contract will result in displacement of Bureau personnel; b. Must notify the contracting organization within 5 days of contract application receipt. c. Within 5 days of receipt must determine if contract application contains all pertinent information necessary. d. Forward contract application to Area Director with recommendations within 30 days if information is adequate and no declination issues have been identified.
5. The Contracting Officer should request and consider recommendations from the tribal organizations....Agency Superintendent in designating the Contracting Officers Representative. p. 9-7.	Advisory only to the Contracting Officer.
6. Recontracting when Contractor is not a Tribal Government. p. 10-11.	Advisory only to the Contracting Officer.

7. Obligation of Funds (this area of authority and responsibility is not referred to in the regulations.)	Superintendent has the only authority to obligate funds (DI-1) and issue purchase order numbers. The Area Director does not have that authority.

*This short presentation is confined to the first ten Chapters of the Procedural Guidelines.

United States Department of the Interior Property & Supply
BUREAU OF INDIAN AFFAIRS
Western Washington Agency
3006 Colby Avenue - Federal Building
Everett, WA 98201

May 26, 1977

Mr. Tom Anderson, Business Manager
Quinault Business Committee
P.O. Box 1118
Taholah, WA 98587

All requests to recontract or new contract applications must be submitted to the Agency Office no later than June 30, 1977, if:

1. You want existing contractual arrangements to continue without a break into the New Fiscal Year, and/or
2. You want to have a new contract with us which starts on the first day of the New Fiscal Year.

The 1978 Fiscal Year begins on October 1, 1977.

The need for having your requests to re-contract or your applications for new contracts into our offices by June 30, 1977, if you want services effective on October 1, 1977, is created by the rules and regulations of P.L. 93-638 and by the Policies and Procedures of the Portland Area and Western Washington Agency.

The rules and regulations allow:

1. Agency Offices	30 days to review
2. Area Offices	30 days to review
3. Contracting Officers	30 days to negotiate and award
For a total of =	90 days

The policy of the Portland Area is that no new contract effective date will be back-dated.

The effective date for new contracts will be the date signed by the Contracting Officer.

The effective date of contracts extended by re-contracting will be the date following the end of the contract re-contracted, if the request is received no later than September 30, 1977.

Remember that invoices for reimbursements cannot be processed until requests for re-contracting have been processed and contract modification is completed. We still need 90 days for this process.

Those requests for re-contracting received after September 30, 1977, cannot be processed. A new contract application must be prepared. In this case the procedures for new contracts must be followed and the effective date will be the date the awarded contract is signed by the Contracting Officer.

We must emphasize that the time-lines outlined above must be followed or you will probably have programs which are interrupted and you may incur costs for which you cannot claim reimbursements.

It must be further emphasized that our current information on fund availability is tentative and any negotiation prior to fund allocation must be subject to fund availability. This means that additional negotiations may be necessary if allocations differ from tentative estimates.

If you need technical assistance, contact those Agency personnel with whom you initiate applications for contracts and requests for re-contracting.

We attach guidelines which should be followed to apply for contracts or to request re-contracting.

Public Law 93-638 and its rules and regulations require certain information in Tribal Resolutions which authorize contracts or re-contracts with the Bureau of Indian Affairs. We enclose a sample resolution for your review. This is so you can have time for Council review and decision by Resolution, if needed, to permit valid contract negotiation.

We will send you additional information, as quickly as possible, on those proposals or opportunities of which we are aware.

Sincerely yours,

John B. Benedetto

Superintendent

Enclosures

REQUEST TO RE-CONTRACT

1. Full name, address and telephone of the tribe.

2. Full name of Tribe(s) directly benefiting or Receiving services from the contract.

3. Date of the request to Recontract.

4. Signature of the Authorized Representative of Tribe.

5. Attach a New Budget on the amount available to finance the direct costs of the contract.

6. Plan of Operation. If the organization will be operating under the same scope of work contained in the previous Contract, it can simply indicate this fact. Any changes to be made with in the scope of the original contract. Must be described.

7. Equipment, Facilities and Buildings. If the Tribe requires additional equipment from the Bureau or replacement of old equipment previously provided by the Bureau, the request to Recontract should so indicate. If there are no changes, such information need not be provided.

Application for New Contract

Exhibit # 1

A) Full name, address and telephone number of the tribal organization applying for the contract.
25 CFR Part 271.14(a)

B) Full name of tribe(s) which the tribal organization is affiliated.
25 CFR Part 271.14(b)

C) Full name of tribe(s) directly benefiting or receiving services from the proposed contract.
25 CFR Part 271.14(c)

D) Tribal request to contract (see Exhibit #2)
25 CFR Part 271.18

E) Date of submission to the Bureau and name of the office where the application was submitted.
25 CFR Part 271.14(e)

F) Signature by the authorized representative of the tribal organization and date signed.
25 CFR Part 271.14

G) Estimated number of Indian people who will receive benefits or services from this contract.
25 CFR Part 271.14(g) & 271.16

H) Descriptive narrative of what function(s), Bureau program(s), or portions of program(s) the tribal organization wants to contract. When the organization is planning to operate the program in the same manner as the Bureau, the organization can use the Bureau's existing program description. When a tribal organization's contract application proposes to alter the design of an existing Bureau program, to contract for a portion of a program, or to contract for a program the Bureau is authorized to provide but currently is not, a narrative describing the scope and nature of the program shall be provided.
25 CFR Part 271.14(h)

The tribal organization must also indicate the Bureau personnel it plans to utilize if any, whatrer by: (a) hiring them directly; or (b) by utilizing their services while they remain with the Bureau through the use of the 1834 Act or the Intergovernmental Personnel Act (See the Handbook for Decision Makers for the personnel options available to tribal organizations and the BIAM requirements for utilizing the options.) The tribal organization must have determined by the time it submits its application: (a) which Bureau employees (by name) it wishes to hire directly or otherwise use under the contract; and (b) it should have determined from the employees whether they are willing to accept tribal employment or assignment to the tribal organization.

The regulations require that the Bureau have 120 days to process any Bureau personnel actions that are caused by contracting. After the initial submission of the application, if the tribal organization makes any change in the staffing plan which affects the status of Bureau personnel, the starting date of the contract may have to be delayed.

25 CFR Part 271.14(i) (5) & Part 275

(6) The evaluation criteria and control systems the tribal organization will use to assure that the quality and quantity of actual performance conforms to the requirements of the plan. (See item (i) (3) above.) This requires: (a) a monitoring system which describes how the tribal organization proposes to control the day-to-day operations of the program to assure that progress is being made toward achieving the program's goals and objectives. The monitoring system should enable the tribal organization to identify problems in program operations in order to take action to resolve them; and (b), an evaluation system which will enable the tribal organization to determine whether its goals and priorities have been achieved and which provides the tribal organization with a basis for revising its program plan.

25 CFR Part 271.14(i) (6)

J) Statement of tribal organization's substantive knowledge of the program, part of a program, or functions to be contracted. The declination criteria contained in 271.15(c)(3) define the minimum standards for the substantive knowledge an organization must have to avoid declination. Those standards should be consulted when a tribal organization prepares this part of the application. The standards are different when the tribal organization is not the tribal governing body.
25 CFR Part 271.14(j)

K) Description of personnel system and position descriptions for key personnel. This is a specific declination issue. If the tribal organization has a personnel system already in place that it will use to hire persons under the contract, that system should be described in the contract application and/or a copy of the operating manual or guidelines of the personnel system should be included with the application. The description must show how the system prescribes the minimum occupational qualification standards. In addition, the tribe must certify that personnel to be used under the proposed contract will be employed under the personnel system. If the tribal organization does not have such a personnel system, its application must include job descriptions for key personnel to be hired under the contract. "Key personnel" are considered to be those individuals who set policy and/or make critical decisions to implement policy; professional employees whose technical knowledge is critical to contract performance; or, employees responsible for management of contract funds. The tribal organization must also agree in the application to establish a personnel system which meets the minimum standards prescribed above prior to the hiring of anyone other than key personnel. The timetable for establishing this system shall be agreed to during contract negotiations.
25 CFR Part 271.14(k)

L) Listing of equipment, facilities, and buildings needed to carry out the contract and how the tribal organization intends to obtain them. The tribal organization should individually list the equipment items it will need which are valued at more than $300. Equipment costing less than $300 need not be itemized, but sufficient detail should be provided to enable the Bureau to determine whether sufficient equipment will be available to operate the program. Facilities and buildings required by the tribal organization should also be described. When the tribal organization proposes to take over an entire Bureau program, it may obtain the necessary equipment, facilities and buildings which the Bureau is presently using. In such cases, itemization can be done during contract negotiations. When the tribal organization proposes to contract for only a portion of a Bureau program, specific itemization is required at the time of application. The only condition under which the Bureau can refuse to provide the equipment is where to do so would "seriously interfere with the Bureau's ability to provide services to Indian people in non-contracted programs" (271.42). Although it may be useful before the application is submitted to begin negotiations on what equipment facilities and buildings will actually be made available, it is not required. Such matters can be negotiated during the application review process. The burden is on the Bureau to demonstrate why any equipment, facilities or buildings requested cannot be made available. If the tribal organization proposes to use any non-Bureau equipment, facilities, or buildings, it should so indicate and identify each in the contract application. The method for abtaining such items (purchase, lease, rent with contract funds) should also be indicated or request approval to purchase through G.S.A.

25 CFR Part 271.14(1)

M) Certification of the Bookkeeping and Accounting procedures. This is a declination issue. A tribal organization will avoid having the contract declined on the basis of inadequate bookkeeping or accounting procedures by providing any one of the three documents referred to below. The tribal organization may submit either: (a) a certification from a licensed accountant that the bookkeeping and accounting procedures the tribal organization presently uses meets the standards of 25 CFR 276.7; or (b) a written statement that it agrees to establish a bookkeeping and accounting system that meets the standards of 25 CFR 276.7 and to have the system certified by a licensed accountant; or (c) a statement to the fact that the tribal organization has submitted a certification of its accounting system in connection with a previous contract application. When the tribal organization does not have a certifiable system as in (b) above, it can postpone the actual development of the system until after the contract is awarded. However, no payments or advances can be made under the contract until the accounting system has been certified by a licensed accountant and a copy of the certification submitted to the Bureau Contracting Office. A licensed accountant for the purpose of this provision is a person who is a CPA or otherwise licensed by the State in which he or she practices.

See Exhibit # 3   25 CFR Part 271.14(m) and 25 CFR Part 276.7

N) Proposed system for managing property and keeping records or agreement to establish, within 90 days of contract execution, a satisfactory system for managing property and keeping records. This is a specific declination issue. The standards for acceptable systems are set out in 271.15(c)(6)(i). The tribal organization may submit descriptions of its property management and recordkeeping systems responding to the specific declination criteria; or, it may agree to establish these systems after the contract has been awarded.

25 CFR Part 271.14(n)

O) Advance Payments required by the tribal organization for contract. *"Any request for Advance Payment by a tribal contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures (30, 60 or 90 days, by Major Budget Categories)."

(1) Letter of Credit. When the annual advance to a tribal contractor is expected to exceed $120,000 in the aggregate and the contract term is for at least one year, the letter-of-credit method normally shall be used. The requirements contained in Charles 2000 of the Treasury Fiscal Requirements Manual, as modified or supplemented, shall apply to making these advance payments. See exhibit #4

(2) Special Bank Account. See exhibit #5

(3) IIM Account (?) 25 CFR Part 271.14(c)

P) Term of contract requested and proposed starting date of contract. Contracts will generally be for a period of one year. However, contracts for up to three consecutive years will be permitted, under the following conditions: (a) the services provided under the contract can be reasonable expected to be of a continuing nature and therefore, a longer contract term is an advantage to the tribal organization and the Bureau; and (b) tribe(s) to be served by the contract request a longer contract term in the tribal resolution(s) authorizing the contract application. The tribal organizations that request contracts of more than one year should be aware that the contract is subject to the availability of appropriations and to renegotiation at the start of each year.

The proposed starting date can be any time after the contract is

approved. However, when the contract may result in the displacement of Bureau personnel (i.e. any contract resulting in the transfer or reduction-in-force of existing Bureau personnel), the starting date of the contract may be delayed up to 120 days after the application was received.
25 CFR Part 271.14(p)

ADDITIONAL INFORMATION REQUIRED IN APPLICATION

Q) Indirect cost rate percentage if established.

R) Tribal insurance as required by 14H-70.611 of 93-638 and is a part of Part 300 General Provisions. Exhibit #6

S) A statement assuring consistant delivery of services to Indians in a fair and uniform manner. See exhibit # 9
25 CFR Part 271.15(b)(i)(ii)

T) Name and title of Contracting Officers Representative. Either as a part of the application or in tye cover letter.
See exhibit # 7

U) Requisition for obligation of funds (DI-1).

W) Waiver of regulations is a non-delegable discretionary power that can be exercised only by the Commissioner. Since the waiver of regulations is a discretionary authority, there is no appeal from the Commissioner's decision.
When a tribal organization has identified a regulation that conflicts with the program plan, it can include a request for a waiver of the regulation, accompanied by a brief justification, in its application. The Agency Superintendent, upon receipt of the request for waiver, will forward it to the Commissioner through the Area Director. The Superintendent and Area Director shall make recommendations to the

Commissioner on whether the waiver should be granted. The request for waiver shall be received by the Commissioner no more than 20 days after the Superintendent has received the request for waiver. The Commissioner shall act on the request and notify the tribal organization, Area Director and Superintendent of his decision within 30 days of its receipt.

When a tribal organization does not request a waiver but the Superintendent or Area Director determines during the review of the application that the program plan is inconsistent with a Bureau regulation, they shall immediately notify the tribal organization and offer to assist it in preparing a request for waiver. When the tribal organization has submitted the request to the Superintendent, the same time periods for action described above shall apply.

If after notification by the Superintendent the tribal organization does not believe there is an inconsistency between the program plan and the regulation, it may refuse to submit a request for waiver. In such a case, the contract application shall be immediately forwarded to the Area Director for review. If the Area Director agrees with the Superintendent, the tribal organization will be notified that the waiver issue is being referred to the Commissioner for decision. In the meantime, the contract application review process will be suspended. If the Commissioner also agrees, the tribal organization will be notified within 30 days of his receipt of the issue and must either request a waiver or modify its application before the process continues.. However, if either the AreaDirector or the Commissioner agree with the tribal organization, the application shall be returned to the appropriate Bureau official and the review process continued.

2nd Draft Resolution
638 Contract Request

(TRIBAL INTRODUCTION)

WHEREAS, the __(Tribe's name)__ tribe wishes to enter into a contract by the authority contained in P.L. 93-638, and

WHEREAS, Section 271.18 of the Rules and Regulations governing contracts under the Indian Self Determination Act requires that the tribe request a contract by resolution, and

WHEREAS, certain required provisions must be contained in the request.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that a contract for the purpose of __(Explain briefly)__ be entered into with the Bureau of Indian Affairs to begin __(Date)__ and continue through __(Date)__ unless modified by tribal request at a later date.

BE IT FURTHER RESOLVED, that __(Name or Title of Tribal Officer)__ be hereby authorized to negotiate the contract with the Bureau of Indian Affairs on behalf of the tribe and that __(Name or Title of Tribal Officer)__ be hereby authorized to execute the contract and any amendment thereto on behalf of the tribe and that these authorities shall expire __(Date)__.

BE IT FURTHER RESOLVED, that the contract be presented to the tribal governing body at a regular or special meeting for review and approval before final execution of the contract, and that any amendment thereto shall also be presented to the governing body for review and approval before final execution.

(TRIBAL CERTIFICATION)

________________ ______
Secretary

Attest:

________________ ______
Chairman

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TYEE TRIBAL RESOLUTION 1977-34

WHEREAS, the Tyee Indian Guard of the Honorable Tribe (T.I.G.H.T.) Board is the duly constituted governing body of the Tyee Indian Tribe, in accordance with the Constitution and ByLaws of the Tyee Indian Tribe as adopted by the voting members of the Tyee Tribe on February 30, 1935 and approved by the Interim Acting Associate Assistant Commissioner of Indian Affairs on March 32, 1936; and

WHEREAS, the Tyee Tribe wishes to enter into a contract by the authority contained in P.L. 93-638, and

WHEREAS, Section 271.18 of the Rules and Regulations governing contracts under the Indian Self Determination Act requires that the tribe request a contract by resolution, and

WHEREAS, certain required provisions must be contained in the request.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that a contract for the purpose of tagging all tribal fishermen and training all Puget Sound Salmon to migrate to Tyee Fishing Grounds be entered into with the Bureau of Indian Affairs to begin March 32, 1977 and continue through February 30, 1978, unless modified by tribal request at a later date.

BE IT FURTHER RESOLVED, that Chairman be hereby authorized to negotiate the contract with the Bureau of Indian Affairs on behalf of the tribe and that the T.I.G.H.T. Chairman be hereby authorized to execute the contract and any amendment thereto on behalf of the tribe and that these authorities shall expire the date the contract is completed.

BE IT FURTHER RESOLVED, that the contract be presented to the T.I.G.H.T Board at a regular or special meeting for review and approval before final execution of the contract and that any amendment thereto shall also be so presented for review and approval before final execution.

CERTIFICATION

I hereby certify as Secretary of the Tyee Indian Guard of the Honorable Tribe (T.I.G.H.T) Board that the above resolution number 1977-34 was adopted at a Special Board meeting on this 2nd day of March, 1977 held at the Quinault room of the Tyee Lodge at which a quorum was present, by a vote of 1 FOR 0 AGAINST and 12 abstaining.

T.I.G.H.T Secretary

Attest:

Chairman of the Board

2. Current levels of expertise of Bureau personnel or the willingness of the Bureau to participate under Procedural Guidelines on 25-CFR-271 Indian Self-Determination and Education Assistance Act April 1977.

The degree of expertise, much less understanding, of the procedural guidelines of PL 93-638, to me, is questionable on the part of Bureau personnel even after their training programs, or they are reluctant to adopt them. An example, used here purely as an example is a letter from our Agency Superintendent dated May 26, 1977 (attached) explaining to us the rules and regulations of recontracting. The unfortunate part of this letter, as indicated below is that it is somewhat misleading as well as incorrect besides indicating a dramatic reluctance to conform to the new regulations by the BIA.

The following is a point by point discussion of recontracting procedures as presented in Agency Superintendent's letter dated May 26, 1977 attached.

"All requests to recontract or new contract applications must be submitted to the Agency Office no later than June 30, 1977 if:"

The unfortunate part of this statement is that it is incorrect in two different ways as well as being very authoratative in nature. In the first instance all recontracting applications if "Contractor is a Tribal Governing Body," as we are, are submitted directly to the Area Offuce and not to the Agency Office (p. 10-10). In the second instance the regulations are silent as to when its request must be submitted before the expiration date of the existing contract.

"The need for having your requests to recontract or your application for new contracts into our office by June 30, 1977, if you want services effective on October 1, 1977 is created by the rules and regulations of PL 93-638 and by the Policies and Procedures of the Portland Area and Western Washington Agency."

"The Rules and Regulations allow:

1. Agency Office	30 days to review
2. Area Office	30 days to review
3. Contracting Officers	30 days to negotiate and award
For a Total of =	90 days to negotiate and award

My response to this statement is as follows:

1. According to the Procedural Guidelines on 25-CFR-271 April 1977 Revised Chapter 10 "Recontracting", Section V "Bureau Review of Contract Request to Recontract", Subsection B, contractor is the Tribal Governing Body".

   "Upon receipt of the request, the Area Director shall within 30 days determine:

   (1) The amount of funds available for the contract;

   (2) That the request is appropriate for recontracting; and

   (3) That all required information has been provided by the Tribal Governing Body."

"Within the same 30 days, the Area Director shall do one of the following:

(1) Notify the Tribal Governing Body that the request is appropriate for recontracting and is complete;

(2) Notify the Tribal Governing Body that the request is incomplete and identify needed information; or

(3) Notify the Tribal Governing Body that the request is inappropriate for recontracting and offer technical assistance to the Tribal Governing Body to develop an initial contract application".

Further on in Chapter 10, specifically Section VI "Negotiations" Subsection B "Time Constraints" the time constraints on recontracting are further restrained by the statement that "If there is not sufficient time to award the "new" contract before the existing contract expires, the existing contract shall be extended to assure there is no break in contract services". A statement of this nature indicates to me that not only will they process the recontract within the time allowed before the contract expires, but if they are unable to do it will afford financial assistance to the tribe to assure there is no break in contract services before the new contract is issued.

2. The point remains as to whether the Policies and Procedures of the Portland Area and the Western Washington Agency can in fact abrogate the Procedural Guidelines to the extent that they indicate in this letter or not. If so, in my opinion, they are in fact re-institutionalizing Bureau procedures prior to PL 93-638 and therefore deferring the impact of the law further. My position here is based on the belief that PL 93-638 was intended to streamline the cumbersome operation of the Bureau and thereby provide more direct needed services to the Indian people rather than re-institutionalize past bureaucracies. If it is not, I stand corrected.

We recommend an intensive training program for Bureau personnel to focus on the intent and implementation of PL 93-638. We also recommend that a comprehensive outside evaluation of the BIA functions on all levels to determine the extent of the implementation and impact of PL 93-638 on both the BIA and Indian tribes.

3. Current BIA Review Procedures in respect to Contract Application, Contract Amendment, or Recontracting.

The attached letter from Tom Anderson, of my staff dated March 16, 1977, and the following overview flow diagram of actual current Bureau operations indicates explicitly my total frustration over the interworkings of the BIA. As indicated in both of these exhibits delay is inevitable along with frustration and uncertainty due to the customary three months delay in gaining approval or disapproval for anything from contract application, contract amendment to recontracting. For example, as mentioned specifically in the letter, attached, we have been waiting to have our indirect cost rate applied to all our BIA contracts since our request went in to the BIA on December 16, 1976. Of the FY76 and FY77 contracts that our indirect cost rate applies to only six (6) of the seventeen (17) contracts have been modified to include indirect cost in total. The eleven (11) remaining BIA contracts yet to be modified, as of this date, represent approximately $274,048.08 or 32% of our total indirect cost base for the 15 month period from July 1, 1976 to September 30, 1977 with no relief in sight.

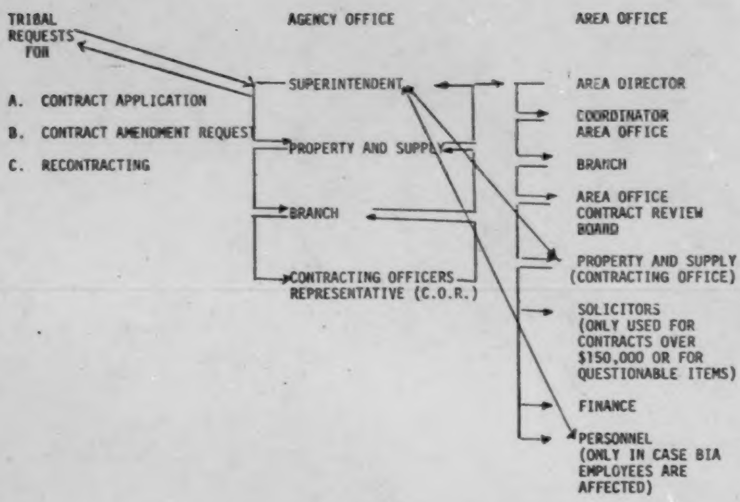
The following flow diagram depicts not what is supposed to exist under PL 93-638 given in the Procedural Guidelines, but what we currently encounter. It is not intended to give the reader a step by step work flow diagram, but an overview of the review process that currently is in operation prior to approval of any request (denial can only come from the Commissioner as it now stands and therefore represents just another step. The solid lines indicate the tremendous interdependence of review activity and duplication of all of the Bureau offices and branches that are required before a decision can be reached. The dotted lines, on the other hand, depict the communication channels that are currently at, its status, besides assisting the Bureau personnel to arrive at a conclusion. Overall, it has been our experience that any effort to pass over any one of the review steps within the Bureau results in confusion and a general backtracking of our requests to the by-passed review steps.

My recommendation to solve this demonstrated inefficiency besides antiquated contract review process now in operation within the Bureau of Indian Affairs as well as being basically retained through the implementation of 25-CFR-271 are as follows:

1. As previously recommended in Section one (1) of this report, I strongly urge the consolidation of contracting operation into just one Bureau office, either the Area Office or the Agency Office. In doing so I feel that a lot of the demonstrated duplication of effort can and will be eliminated along with its associated delays and ambiguities of Bureau operation.

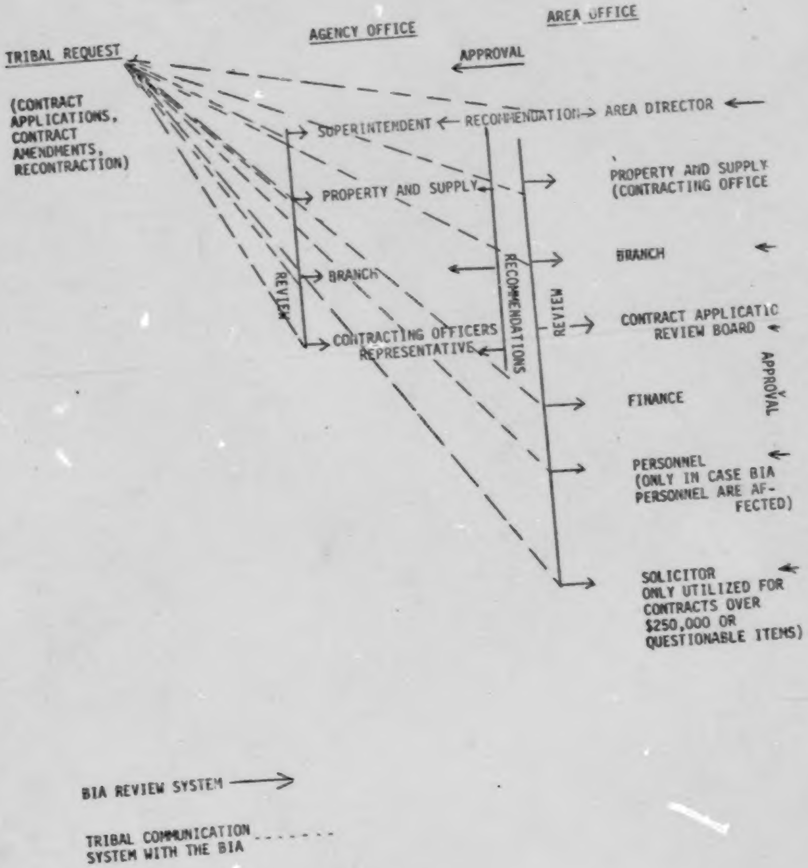
2. I recommend that the Contracting Officer, now the Property and Supply Branch in the Area Office, be granted responsibility and authority and therefore accountability over contracting. This recommendation, if adopted, in my opinion, would centralize as well as clarify the lines of communication within the Bureau and with the tribal organization affected by contracting in addition, adoption of this recommendation would decrease the number of ombudsmen positions, such as the Contracting Officers Representatives, and thereby decrease the tendency towards feather-bedding within the Bureau while increasing accountability.

BASIC PROCEDURAL
FLOW DIAGRAM OF CURRENT BUREAU OPERATIONS


TRIBAL REQUESTS FOR
A. CONTRACT APPLICATION
B. CONTRACT AMENDMENT REQUEST
C. RECONTRACTING
AGENCY OFFICE
SUPERINTENDENT
PROPERTY AND SUPPLY
BRANCH
CONTRACTING OFFICERS REPRESENTATIVE (C.O.R.)
AREA OFFICE
AREA DIRECTOR
COORDINATOR AREA OFFICE
BRANCH
AREA OFFICE CONTRACT REVIEW BOARD
PROPERTY AND SUPPLY (CONTRACTING OFFICE)
SOLICITORS (ONLY USED FOR CONTRACTS OVER $150,000 OR FOR QUESTIONABLE ITEMS)
FINANCE
PERSONNEL (ONLY IN CASE BIA EMPLOYEES ARE AFFECTED)

BIA REVIEW PROCESS SYSTEM ——→

GENERAL FLOW DIAGRAM OF CURRENT BUREAU OPERATIONS REVIEW PROCESS


AGENCY OFFICE
AREA OFFICE
APPROVAL
TRIBAL REQUEST
(CONTRACT APPLICATIONS, CONTRACT AMENDMENTS, RECONTRACTION)
SUPERINTENDENT
RECOMMENDATION
AREA DIRECTOR
PROPERTY AND SUPPLY
PROPERTY AND SUPPLY (CONTRACTING OFFICE
BRANCH
BRANCH
REVIEW
RECOMMENDATIONS
REVIEW
CONTRACTING OFFICERS REPRESENTATIVE
CONTRACT APPLICATIC REVIEW BOARD
APPROVAL
FINANCE
PERSONNEL (ONLY IN CASE BIA PERSONNEL ARE AFFECTED)
SOLICITOR ONLY UTILIZED FOR CONTRACTS OVER $250,000 OR QUESTIONABLE ITEMS)
BIA REVIEW SYSTEM
TRIBAL COMMUNICATION SYSTEM WITH THE BIA

4. Implications and Examples of the current BIA Budgeting System.

In a recent contract negotiating session, we were told by the COR that the contract service funding level may need to be cut since the contract funds were taken from the agency cost-of-living increase line item. If Bureau personnel are provided a cost-of-living increase, funds for the Tribal Contract for Social Services will not be available at the same level. We experienced a similar occurrance with a decrease on the level of a Forestry contract to provide additional funds for Bureau personnel.

The Tribe requested and submitted a master contract for Law Enforcement services. The Planning and intent was to provide a comprehensive program with the needed flexability of money and manpower to meet total tribal Law Enforcement needs within the total allocation of funds to the tribe for Law Enforcement services. This 638 master contract was submitted and approved, but was simply an exercise in complicated cover sheet for the five separate and independent budgets and contracts we are still required to maintain and operate because of the Bureau line item budgeting of these as separate funds and franchises. The Tribal priority to run a more effective, efficient program is apparently irrelevant.

The Band Analysis System begins with the fundamental assumptions that the current service level is adequate to meet the needs of the Indian people. Programming and funding allocation is predicated on maintenance of existing service level as a fundamental criteria. Band Analysis places a restrictive 5% increase or decrease on funding levels. The fact is, however, that these service levels relate to the specific functions and operations of the Bureau of Indian Affairs. Each tribal contract or grant is tied to a specific Bureau line item or budget category. These are the activities of the BIA, not the tribally determined priorities, programs or funding levels.

The Secretarial funding level for service, contracts or programs is often quoted, and lack of funds is supposedly not a 638 contract declination issue. In reality, however, the funds pass through many levels of the Bureau Budgeting process, and are subject at each level to expenditures for the maintenance of the Bureau. A contract not declined for lack of funds but also not funded is hardly a reality on the implementation level of tribal operations.

We, therefore, recommend a total revision not an intermediate application at one level of a new or different budget system--of the process of Bureau Budgeting and allocation of funds. This should reflect the change of functions of both the Bureau and the tribes.

Quinault Indian Nation
POST OFFICE BOX 1118 □ TAHOLAH, WASHINGTON [illegible] □ TELEPHONE (20[illegible]) 276-[illegible]

March 16,1977

Cecil Bremner
Property and Supply
Bureau of Indian Affairs
Western Washington Area Office
Federal Building
Everett, WA. 98201

RE: Indirect Cost Rate Application

Dear Cecil:

We have gone a long way in respect to applying our Indirect Cost Rate to our contracts with your agency. The only problem remaining as I see it is the absolute collection of money rather then approving paper work. Sometimes I feel that I'am caught on a giant paper work campaign none of which is legal tender; the banks can't accept my efforts.

Below is a list of contracts that we have with your agency that according to our correspondence both in the form of resolution and letters the indirect cost rate applies. This list has a multipurpose intent on my part some of which are: to indicate all the contracts that our rate is applicable; to indicate explicitly our current state of the arts in applying our rate in a randomly selected basis rather then a comprehensive systemized way as it should and must be; to indicate explicitly to you what additional paperwork must be processed prior to the total adoption of our rate; to indicate explicitly that we are currently in the third (3) month of applying our rate and have yet to gain the ultimate benefit of collecting the rate on a comprehensive all inclusive manner; to indicate explicitly my total frustration with your Bureau in its inept way of handling a simple program who's total effect will ultimately benefit all

TITLE	FROM	TO	AMOUNT
Social Service FY76	07-01-77	12-31-76	$ 30,000
Social Service FY77	10-01-75	09-30-77	16,000
YOP FY76	07-01-76	12-31-77	59,227
YOP FY77	10-01-76	09-30-77	44,300
Fisheries Enforcement FY76	07-01-75	12-31-76	152,500
Timber Trespass FY76	07-01-75	12-31-76	41,875
1. Law & Order FY76	07-01-75	12-31-76	14,682
Meal Service FY76	07-01-75	08-30-76	8,550
Law Enforcement Service FY77	10-01-76	09-30-77	135,764
2. Criminal Justice System FY76	09-30-76	03-15-77	10,000
Summer Recreation FY76	06-01-76	08-30-76	6,000
3. Fisheries Management FY76	01-01-76	12-31-76	470,000
Fisheries Management FY77	10-01-76	09-30-77	413,000
Water Inventory FY76	06-01-76	05-31-77	19,729
Economic Evaluation FY76	06-01-76	05-31-77	2,490
Forestry Management FY77	01-01-77	09-30-77	353,728
3. Forestry Development FY76	01-01-76	12-31-76	616,228
Forestry Development FY77	01-01-77	09-30-77	475,000
Stream Clearance FY76	09-01-76	09-30-77	17,900
Mistletoe Control FY76	07-07-76	06-30-77	20,000
4.		TOTAL	$ 2,506,953

1. We requested specifically that this contract be extended to December 31,1976 along with all of the rest of our FY76 contracts that had a expiration date of September 30,1976 because we did not get the Transitional Quarter moneys until after September. Your agency in turn granted the extension on all other contracts except this one which in my opinion was overlooked by you. Please adjust your records accordingly. (Our extension requests were not official until late December as you will remember).

2. This contract was added on to our FY76 Letter of Credit but fortunately we have yet to receive the Work Book which is the deliverable. We are sending our Police Administrator, Bill Petit, to Spokane on March 23, to pick up the elusive Work Book, thirteen days after the expiration of this contract. We have asked for a time extension on this contract so that he can fill it out but in so doing I ask here now for additional money (what is going on up there?).

3. According to our telephone converstion we were supposed to have had the Contracting Office Representative in Taholah to discuss these contracts in respect to their relative completeness prior to applying our Indirect Cost Rate and extensive request ot June 30,1977. Unfortunately we have never received any correspondence regarding this nor have we been visited by the Contracting Office Representative which created another major problem.

When will your agency get off dead center and do something like granting our time extension request so that we can comply with our Indirect Cost Rate and in turn grant us the approval rate? Must you delay it? The Solicitors Office approved it.

3. There were some problems regarding service contracts extensions but I can't for the life of me understand why. Expecially at this time with all the extension approved. All of the various meetings held to discuss the absolute unreal situation that confronted us with no operating money for three months during the Transitional Quarter period and the total absolute insecurity arising out of operating any of our program with no approval for any contract through months further down the road. What then is the problem? Your answer should be in writing.

I trust that you will receive this letter as personnally as need be to elicit action or reaction to the point where something positive results from there. I realize perfectly well each and everyone of you in the Bureau is doing everything to alleviate this abnormal totally unecessaty and inconsistant situation; but, I also realize that the staff problems come about because no one wants to take affirmative action to correct it because it is no fun to state unequivocally that the buck stops here.

What scares the devil out of me is the knowledge that a new form of buck passing is now a reality. The Contracting Office Representative has been introduced into the system. Now we correspond individually with the C.O.R., whoever he may be, who in turn corresponds with you and you with Portland with the appropriate Branches in between. Where does it all stop? Don't tell me it is the Contracting Office Representative.

Sincerely,

Tom Anderson
Director of Administration

TA:bw
cc:ta
bw
file

Mr. De La Cruz. I would like to move on down the table, just going to my left, and have Mr. Al Trimble be our next speaker.

STATEMENT OF ALBERT W. TRIMBLE, PRESIDENT, OGLALA SIOUX TRIBE

Mr. Trimble. Senator Abourezk, I also appreciate the opportunity to testify.

Chairman Abourezk. Welcome to the committee Al. We are happy to have you here.

Mr. Trimble. As a former member of the BIA, they are very proud of me, and they really go out of their way to make things run smooth for me at Pine Ridge, you know that. [Laughter.]

Chairman Abourezk. "As a former member," that is kind of like an ex-convict: Is that correct? [Laughter.]

Does that carry the same taint with it?

Mr. Trimble. I think the convicts have it easier. [Laughter.]

Chairman Abourezk. Here is a guy who is going straight. [Laughter.]

Mr. Trimble. The Oglala Sioux Tribe now contracts with the United States for the operation of programs funded in excess of $2 million. But this is less than one-sixth of the funding allocated for services to the 12,500 or so on-reservation members of our tribe, and we consider this to be progressive and effective and service delivery to our people and beneficial in advancing concepts and real internalization of self-determination.

What we have to say though is that this does not represent an optimum degree of progress, considering the many years of participation, advocacy, and development on the part of Oglala Sioux Tribe toward the day when local operation and control of programs became a fact in law.

And many of the developing younger leaders within our tribe for the past 10 years or more moved in the vanguard of Indian groups and organizations—advocating for local control of program operations—as an essential part of the total self-determination concept, and they were prepared and bound by tribal integrity to improve the quality and delivery of services to our people.

Through long fought for principles of community development and self-determination, we feel these are primarily vested or based on the thesis that understanding and appreciation of services can best be attained by inviting and using the highest possible degree of local participation in developing and administering the programs that directly serve our people.

While this failure to obtain optimum goals and progress can be attributed to several areas of implementation in procedures and policies--and most of these were predicted and outlined in hearings before your committee before—I will touch on only those that have emerged as the most glaring, yet, the most controllable if the will and dedication exists in the BIA to implement and advance the spirit and principles of Public Law 93–638 and we believe in those legislators.

The Oglala Sioux Tribe has been confronted by massive resistance to contracting fostered and abetted by BIA employees who are members of the tribe. These employees seem unbridled by any local interpretation of conflict-of-interest regulations, code of conduct for Federal employees, or simple objective explanations of the law and regulations.

In fact, in many cases, their actions and conduct seem encouraged by higher grades and pay and, sometimes, by non-Indian employees in the Bureau who believe that tribal members would enjoy greater license to resist and they do. Some implementation procedures following the tribal resolutions of intent to contract seem overtly designed to cower and threaten employees unnecessarily.

Massive rift meetings are called and announced in such a manner that job abolishment appears imminent with the basic simple explanation that the tribe's contracting your jobs on the line.

The objective understanding of the law has obviously not been a high priority by the Bureau of Indian Affairs as a preliminary to any implementation procedure.

Perhaps there are no stringent interpretations of laws or codes that will control the conduct of BIA civil service employees, not wishing to abort a civil service career. There are, however, ways and means of evaluating the effectiveness of the area directors, program directors, superintendents, and high level supervisors who permit misinformation and misinterpretation to deter contracting by tribes and Indian organizations who achieve the authorization to do so.

This must be a prime objective of the present administration, we believe. In at least one situation the Oglala Sioux Tribe encountered, the BIA was able to create a declination issue by simply permitting the agency to overexpend program money and thereby offer the tribe a patently inadequate amount for the service to be contracted for, for the balance of the year.

This was done despite the fact that the tribe's intent to contract was legislated prior to the beginning of the new fiscal year.

We are convinced, in this situation, that the BIA was actually nurturing opposition to the contract and believed that the remaining inadequate funding would compel the tribe, at least for the fiscal year remaining, to abort the program taking by contract. It did not.

But the additional money that the BIA had to come up with undoubtedly caused curtailment of services to some other tribes within our area because we insisted on it and got it.

Because of the massive tribal commitment to local program operation, a considerable amount of tribal government time is given to discussion of legislation of proposed service operation and direction. This results in additional meetings and governmental costs to the tribe—probably about 300 percent in relation to the tribal government's activities of one decade ago.

We believe that realistic indirect costs would be established and covered by contract as part of law. As of this time, we are advised by the Bureau of Indian Affairs that no funding is available for the balance of fiscal year 1977.

I can advise you, Senator Abourezk, that given the cost of providing governmental services to 12,500 people with the relatively limited resources of the Pine Ridge Reservation, this spells disaster if it is not corrected in a short order. We believe it is the responsibility of

Congress and the administration to correct that. We sincerely ask for your help in that particular situation.

The promised technical assistance from the BIA and Federal Government has failed to materialize to the point that programs contracted for are constantly jeopardized by delayed, drawn-out fundings, delayed vouchering for funding expended, and in an apparent patent effort to exhibit an interest on the part of the tribe's to manage programs; in other words, BIA technical assistance has become a circus of complicated procedure that the Bureau never experienced, itself, when they managed the same programs.

In summary, it seems that the BIA is finding it very difficult to become a proud parent of this new Indian child which was conceived with Indian input. We have experienced instead this backlash of a paternalistic organization which believes that sooner or later the tribal governments will foul up and fail, and people will resort to the known quantity, the BIA, even though it is known to be lacking but always needed for materialistic survival. This is the Bureau of Indian Affairs.

It is extremely ironic that tribal governments have become the victims of the Federal Government's unwillingness to permit them to be effective, giving them the authority to approve or disapprove the most elemental direction opted for by the contracting tribe.

Given the fact that the poorest and most deprived people of the tribe are generally the most suspicious of change, the BIA has fertile ground to nurture these suspicions against tribal progress in gaining self-determination. They are on it again because their suspicions are based on the fact that few changes in the past have ever worked to their advantage. But we, of course, remember that these were BIA-conceived orchestrated changes in the past.

I would like to enter into the record testimony from the Oglala Sioux Tribe's Public Safety Commission.

Chairman **Abourezk**. It will be admitted.

Mr. **Trimble**. And a statement which urges the reestablishment, redelineation of the Bureau technical assistance center in Denver as a directorate-level office, and that could go a long way toward bringing about answers and improvements to the problems that I have put forth in my testimony. Thank you very much.

[The prepared statement of the Oglala Sioux Tribal Public Safety Commission, and the prepared statement of Albert W. Trimble, president, Oglala Sioux Tribe, follow:]

Oglala Sioux Tribal Public Safety Commission
P. O. Box 468 -:- Pine Ridge, South Dakota 57770

TESTIMONY

TO

SELECT COMMITTEE ON INDIAN AFFAIRS

Regarding the Implementation of P.L. 93-638

by

THE OGLALA SIOUX TRIBAL PUBLIC
SAFETY COMMISSION

INTRODUCTION

Mr. Chairman, my name is Gerald Clifford, I am an Oglala Sioux from the Wounded Knee District of the Pine Ridge Indian Reservation. I am also Vice-President of ACKCO, Inc., an Indian-owned Consulting Firm under contract to the Oglala Sioux Tribe. I am here today as spokesman for the Oglala Sioux Tribal Public Safety Commission. The Public Safety Commission has been created by the Oglala Sioux Tribal Council and delegated full responsibility for the management of all law and order and detention programs on the Pine Ridge Indian Reservation. In that regard, Senator, I am happy to report that since the Tribal Public Safety Department has assumed responsibility for Law and Order on Pine Ridge, we have had a remarkable reduction in violent incidents and a calming of the tensions that have plagued our reservation over the past few years.

I would like to introduce the members of the Public Safety Commission who are here today. You know Mr. Al Trimble, President of the Oglala Sioux Tribe and an ex-officio member of the Commission. This is Mr. Birgil Kills Straight, Commissioner from the Medicine Root District, and Mr. Lyman Red Cloud, Commissioner from the Wakpamni District.

On behalf of the Oglala Sioux Tribal Public Safety Commission we thank the Committee and specifically Senator Abourezk for allowing us to testify and share our experience and concerns regarding the implementation of Public Law 93-368.

P.L. 93-638 CONGRESSIONAL TESTIMONY

Many Bureau of Indian Affairs Officials have yet to fully grasp or will not accept the Congressional intent and spirit of Public Law 93-638. Throughout the process of planning, negotiating and implementing our Law and Order Contract, our experience has shown that certain Bureau Officials have displayed extreme laxity and haphazard management, and have employed every administrative avenue available to marginally comply with P.L. 93-368 rules and regulations.

The following items will provide an overview of our experience during the development and submission of the Law Enforcement Services Contract application, negotiation, contract execution, and our experience to date.

1. The Oglala Sioux Tribal Council during it's Regular Session passed Resolution #76-54 (Attachment 1) authorizing the Oglala Sioux Tribe to contract all contractable portions of the Law Enforcement Services Program at the Pine Ridge Agency, Bureau of Indian Affairs. On October 27 the Tribal Council directed ACKCO, Inc., consulting to the Oglala Sioux Tribe, to perform an evaluation of the Law Enforcement Program prior to development of a contract application.

The Agency Superintendent, Mr. Anthony Whirlwind Horse, immediately requested via telegram, the office of Mr. Eugene Suarez to perform an evaluation of the Program. Although there is nothing but circumstantial evidence, we believe the evaluation request was made to provide the local Bureau with a tool to possibly offset any evaluation ACKCO may have done. The Bureau's Evaluation report, however, did not whitewash the program. We have attached a copy for the record. (Attachment 2)

The evaluation listed many instances of Bureau mismanagement; the prime example was in the area of fiscal management. The Program received an allocation of $891,000.00 for a staffing complement of 59 persons, of which 50 positions were filled. The total B.I.A. personnel budget was $788,000.00 for the 50 positions. When we asked why 9 positions were not filled, the Agency personnel told us that Aberdeen would not take personnel actions to fill the 9 vacant positions in the Law and Order program. In carrying out the evaluation we found that in fact the reason such slots were not filled was that the Bureau had budgeted for raises, premium pay, overtime, and night differential. In fact, there were 9 additional personnel but they were assigned from the Tribal Manpower program.

Mr. Albert Trimble, President, Oglala Sioux Tribe, in a mailgram to Mr. Theodore Krensky's office requested that sound fiscal management procedures be insituted and that spending be moderated in order that there be sufficient funds for the Tribe to contract the program (Attachment 3).

Mr. Krensky's assured the Tribe that such procedures were being instituted (Attachment 4).

The Acting Agency Special Officer submitted a request for additional funds to meet program spending and obligation levels (Attachment 5).

In a January 27 meeting, Bureau Officials acknowledged that $520,000.00 of the budget was the B.I.A. projected spending for the first six (6) months of the fiscal year. This rate of spending would have left the Bureau with a deficet, yet the Bureau management made no effort to control spending. On March 3, 1977 the Bureau sent a letter to the Tribe which stated: "At the present time, the Bureau has $270.0 (sic) available for contract purposes. Does the Tribe wish to contract the program at this time with these funds?" (Attachment 6)

2. The Bureau of Indian Affairs consistently refused to release or took excessive time in responding to requests for information. The initial response from the Bureau was that such information was subject to the Privacy Act. In some instances, the Tribe was forced to resort to having Tribal Attorneys telephone the Bureau Central Office in Washington, D.C. before the Area or Agency would response.

3. The Aberdeen Area Office and the Pine Ridge Agency Office appeared to us at times to be deliberately creating fear, adverse reaction and anger against the Law Enforcement Contract. Reduction in force letters were sent to education department employees advising them that due to the Tribe's contracting of Law Enforcement, They may be "bumped" (Attachment 7). While the letter was technically a requirement of R.I.F. procedure it was totally misleading. The Tribe intervened and protested strongly, and persuaded the Agency Superintendent to write a clarification letter (Attachment 8). This letter was sent to school superintendents to deliver to employees. In some instances employees did not receive the second letter.

Tribal members were given erroneous, misleading or outright false information during the period the Tribe was attempting to contract. An instance of such mis-information was in a Pine Ridge Village meeting at which the Agency Superintendent was present. The Agency Administration Assistant stated that because of the Law and Order Contract the Bureau would lose 59 positions through R.I.F. procedures.

He did not explain that such 59 positions were put in a position reserve and that the contract would provide the Tribe with 65 Tribal positions.

Bureau Officials let it be known that B.I.A. Law and Order would pull out and led people to believe that there be a period without any Law and Order personnel on the Reservation.

A letter was sent to the Federal Bureau of Investigation (FBI) informing that the projected Tribal contract date was Aprill, 1977 and that the BIA was planning to cease criminal investigative operations March 1, 1977. The Bureau, in fact, began to reduce the force prior to the Tribe accepting the contract . It was only after central office intervention that a satisfactory transition force was provided.

The credibility of the Oglala Sioux Tribe is being attacked by the Bureau. In a letter from Anthony Whirlwind Horse to the Secretary of Interior, Mr. Whirlwind Horse requests that a telecopier currently with the Law and Order program be assigned to the Agency Superintendent's office as problems were anticipated with the managing and coordinating functions associated with the Law Enforcement Services Contract, etc. (Attachment 10) What problems does Mr. Whirlwind Horse anticipate? We have only to refer to the evaluation report (Attachment 1) to document the standards that the Bureau maintained. Whether there are problems or not, for a Bureau Official to downgrade the Tribe is unbecoming and in violation of the spirit and intent of P.L. 93-638 (Attachment 9)

4. The Tribal Attorney was informed on May 19, 1977 that the Aberdeen Area had exhausted it's Indian Contract Support Fund, therefore, no indirect cost monies would be available to the Oglala Sioux Tribe for the Law Enforcement Services Contract. We understand that the Bureau, in fact, informed the Appropriations Committee that they did not need such monies and that appropriations for this category were cut.

SUMMARY

The Oglala Sioux Tribal Public Safety Commission firmly believes that Public Law 93-638 is a strong tool for Tribes and Tribal organizations. There were numerous problems encountered while attempting to contract Law Enforcement Service, however, such a contract would not have been possible under the Buy-Indian authority.

I think it would be useful to outline key points of the Law which made it possible for the Oglala Sioux Tribe to contract the Law Enforcement Services from the BIA, in spite of the PIne Ridge Agency and Aberdeen Area Offices' resistence to the contract.

1. The language is Directive; ie: "The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe. . . " The Committee should take special care to insure that this provision is not weakened in any way either by amendment to the law or by changes in the Federal Regulations. If for any reason, the Agency Superintendent, or the Area Directors are given any discretionary power in regard to contracting the Law will have no strength.

2. The Law provides that the Secretary shall provide the same amount of funding to the Tribe that the Bureau would have had, had there been no contract. It should be a matter of record that the Pine Ridge Agency, B.I.A., spent monies at a level of $520,000.00 for the first six months of FY 77 for Law and Order Services and then offered to provide only $270,000.00 to the Tribe for a contract to provide the same services for the second six months of FY 77. It was only because of our familiarity with this provision of the Law that we were able to request the intervention

of your office, Senator, and the intervention of Under Secretary, James Joseph, to force compliance with this provision. While the Oglala Sioux Tribe is large enough to be able to send a delegation to Washington to bring the necessary pressures upon the Bureau to force compliance of the Law, many tribes and tribal organizations are not. It appears to us therefore that there needs to be an on-going Congressional presence that Bureau Officials know will review and monitor the contract application, negotiation, and implementation process. It appears to us that such a presence would provide both the Tribes and the Bureau with the knowledge that Public Law 93-638 has teeth and that Congress fully intends that it be implemented. On the other hand, our experience shows that it was necessary that the Executive Branch of Government at the Secretarial level intervene. Mr. Chairman, it was only after Under Secretary of Interior Joseph intervened twice that the Bureau offered us a funding level that we could live with and that approached meeting the provisions of the Law.

3. A third provision of the Law and regulations that is absolutely essential is the requirement that the Bureau process contract applications within a specified period of time. While the tribes should have the option of beginning a contract when they are satisfied with the terms, conditions and budget, the Bureau should be put under strict time requirements. Without such time requirements the Bureau will in effect stop the contract by simply stalling until they can influence the Council to reverse its decision. Even with the time requirements we have had to involve our attorney to pressure the Bureau to meet such time requirements. It appears to us that an on-going monitoring of the Bureau's compliance with time provisions is necessary.

4. A final point which helped was P.L. 93-638 grant funds allowed us to procure our own technical assistance. It should also be a matter of record that much of the effort of ACKCO Incorporated was directed to neutralizing Bureau opposition to contracting.

There are many things that can be said about the Law, both pro and con. The Oglala Sioux Tribal Public Safety Commission would like to make it a matter of Congressional record, that in spite of the resistance to this contract by Bureau Officials the provisions of the Law were strong enough to allow us to assume control of Law and Order on Pine Ridge and to begin a much needed process of community reconciliation. We think, however, that special care should be taken to insure that the Law is not weakened by amendment or by changes in Regulations. We are especially concerned about the budget and appropriations process and urge the Committee to closely monitor the Bureau's budget process to insure that Tribal contract budgets are given fair treatment by Bureau Officials.

Testimony of Albert W. Trimble, President
of the Oglala Sioux Tribe before Senator
Abourezks Select Committee on Indian Affairs
Hearing. Albuquerque, NM June 24, 1977

The Oglala Sioux Tribe now contracts with the United States for the operation of programs funded in excess of $2,000,000. This is less than one-sixth of the funding allocated for services to the 12,500 on-reservation members of the Oglala Sioux Tribe. We consider this to be progressive, effective in service delivery to our people and beneficial in advancing concepts and real internalization of self-determination.

It must be said, however, that this does not represent an optimum degree of progress considering the many years of anticipation, advocacy and development on the part of the Oglala Sioux Tribe toward the day when local operation and control of programs became a fact in law. Many of the developing younger leaders within our Tribal group had, for the past ten years or more, moved in the vanguard of the Indian groups and organization advocating for local control of program operations as an essential part of the total self-determination concept They were prepared and bound by tribal integrity to improve the quality and delivery of services to our people through long fought for principles of community development and self-determination. These are primarily based on the thesis that understanding and appreciation of services can best be attained by inviting and using the highest possible degree of local participation in developing and administering the programs that directly serve the people.

While this failure to attain optimum goals and progress can be attributed to several areas of implementation procedures and policy, most of which were predicted and outlined in hearings of the American Indian Policy Review Commission, I will touch only on those that have emerged as the most glaring, and yet the most controllable if the will and dedication existed in the Bureau of Indian Affairs to implement and advance the spirit and principles of P.L. 93-638 as we believe it was legislated.

- The Oglala Sioux Tribe has been confronted by massive resistance to contracting fostered and abetted by BIA employees who are members of the Tribe. These employees seem unbridled by any local interpretation of conflict of interest regulations; the Code of Conduct for Federal employees, or simple objective explanations of the law and regulations. In fact, in many cases their actions and conduct seemed encouraged by higher graded and paid, and sometimes by non-Indian members in the BIA who believe that Tribal members would enjoy greater license to resist.

- Some implementation procedures following Tribal Resolution of 'Intent to Contract' seem overtly designed to cower and threaten employees unnecessarily. Massive 'RIF Meetings' are called and announced in such a manner that job abolishment appear imminent, with the basically simple explanation that the 'Tribe' is contracting and your job is on the line. Objective understanding of the law has obviously not been a high priority of the BIA as a preliminary to any implementation procedure. Perhaps there are no stringent interpretations of laws or codes that will control the conduct of a BIA Civil Service employee not wishing to abort a Civil Service Career. There are, however, ways and means of evaluating the effectiveness of Area Directors, Program Directors, Superintendents and high level supervisors who permit misinformation and misinterpretation to deter contracting by Tribes and Indian organizations who achieve the authorization to do so. This must be a prime objective of the present administration.

- In at least one situation the Oglala Sioux Tribe encountered, the BIA was able to create a declination issue by simply permitting the agency to over-expend program fund and thereby offering the Tribe a patently inadequate amount for the service to be contracted for the balance of the year. This was done inspite the fact that the Tribe's intent to contract was legislated prior to the beginning of the new fiscal year. We are convinced, in this situation, that the BIA was actually nurturing opposition to the contract and believed that the remaining inadequate funding would compel the Tribe to, at least for the fiscal year remaining, to abort the program takeover by contract. It did not, but the additional money that the BIA had to come up with undoubtedly cost services to some other Tribe.

- Because of the massive Tribal commitment to local program operations, a considerable amount of Tribal government time is given to discussion and legislation of proposed service operation and direction. This results in additional meetings and governmental losts to the Tribe; probably about 300% in relation to Tribal government activities of one decade ago. We believed that realistic indirect cost rates would be established and covered by contract. As of this time, we are advised by the Bureau of Indian Affairs that no funding is available for the balance of Fiscal Year 1977. I can advise you, Senator Abourezk, given the cost of providing government for 12,500 people with the relatively limited resources of the Pine Ridge Reservation, this spells disaster if not corrected in short order and we believe this is the responsibility of Congress and the Administration. We ask your immediate help in this matter.

- The promised technical assistance from the BIA and Federal government has failed to materialize to a point that programs now contracted for are constantly jeopardized by delayed drawdown of funding; delayed vouchering for funds expended and an apparently patent effort to exhibit ineptness on the part of Tribes to manage programs. In other words, BIA technical assistance has become a circus of complicated procedure never experienced by the BIA itself when they 'managed' the programs.

In summary, it seems that the BIA is finding it very difficult to become a proud parent of a new 'Indian Child', conceived and born with Indian input.

We have experienced instead the 'backlash' of a paternalistic organization which 'believes' that sooner or later Tribal Government will foul up and that the Indian people will resort to the known quantity - even though known to be generally lacking, but always needed for materialistic survival. This is the Bureau of Indian Affairs.

It is extremely ironic that Tribal Governments have become the victim of the Federal Governments unwillingness to permit them to be effective, given their authority to approve or to disapprove the most elemental direction opted for by the contracting Tribe. Given the fact that the poorest and most deprived people of the Tribe are generally the most suspicious of change; the BIA has fertile ground to nurture these suspicions against Tribal progress in gaining self-determination. Ironic, again, because their suspicions are based on the fact that few changes in the past have worked to their advantage. But remember, these were BIA conceived and orchestrated changes.

I would like further, Senator Abourezk, to enter a statement which I will not read but which deals with our proposal to strengthen BIA technical assistance to tribes by staffing up the Indian Technical Assistance Center in Denver and giving it the status of a Bureau of Indian Affairs directorate.

As Indian tribes begin the contracting process with Bureau of Indian Affairs to administer and manage their own programs, it becomes vital that training and technical assistance (T&TA) be provided in a timely and professional manor. To date, training and technical assistance from the Bureau of Indian Affairs has been both fragmented and inconsistent. Contrary to developing a functional delivery system, the T&TA funds are allocated out to area offices who are not geared toward a role of technical assistance.

The need to change the Bureau of Indian Affair's role from that of administration and program service into that of technical assistance is imminent and called upon by P.L. 93-638. From all appearances, nothing is being done to identify or implement this changing role except adding staff to both central office add area office. Tribes continue to have difficulty in the grants process and receiving necessary help in technical assistance. Also, P.L. 93-638 amends the Intergovernmental Personnel Act to make Indian tribal governments eligible to participate in all IPA programs. The Bureau of Indian Affairs should be taking a lead role in coordinating these efforts; and to date, we tribal leaders have seen little evidence of continuity between any of the Federal Agencies or a leadership role by the Bureau of Indian Affairs.

Through testimony to the American Indian Policy Review Commission, a consensus of tribal leaders have indicated their dissatisfaction with the traditional function of the area offices and indicated their desires for change. By giving area offices granting authority and training and technical assistance authority, the very essence and intent of P.L. 93-638 is impeded.

Many tribal leaders believe there is a method that can improve the Bureau of Indian Affairs delivery system in technical assistance. By increasing the scope and authority of the Denver based Indian Technical Assistance Center, the Bureau of Indian Affairs can develop a model system getting Indian tribes and organizations the kind of training and technical assistance necessary for our contracting needs.

I propose the following:

The Central Office reorganize the Denver Indian Technical Assistance Center and elevate it to a Directorate reporting to the Commissioner (Assistant Secretary) with line authority over its field programs. Its authority would be similar to that of the area office's with the exception that this office would have national responsibility. This proposal consolidates the missions, personnel and budgets of the current Denver Indian Action Program; the Washington,D.C. programatic function of "638;" the Division of Facilities Engineering, currently operating from Alberquerque; the Planning Support Group in Billings; and the National Indian Training Center in Brigham City. It would be necessary to also include a Federal/State Intergovernmental Relations Office. The only physical move necessary would be the Washington, D.C. programatic function of "638;" because if Indian Self Determination is carried out, a duplication effort would exist between the Washington, D.C. "638" Office and the current Indian Technical Assistance Center.

With this program consolidation, all phases of training and technical assistance along with all phases of planning can be delivered under one roof and directly identified by Indians as the Bureau of Indain Affairs' mandated role under the "638" law.

This proposal can be done within Bureau of Indian Affairs' current personnel ceilings, accomplished with current expertise within the Bureau of Indian Affairs' system and save already scarce funding.

I am, at this point, completing a detailed program and structure to provide the Senate Select Committee on Indian Affairs and will be prepared to invite the newly appointed Commissioner's (Assistant Secretary) attention to this pressing need.

Chairman **Abourezk**. Thank you, Al. That was very good testimony.

I would like to say that the management study of the BIA that was done by the American Indian Policy Review Commission was extremely well done. The report which was issued was well done and well documented and, I think, goes along the lines of what you and the other witnesses are talking about. It goes toward what ought to be the mission of the BIA, as I see it. Correct me if I am wrong: the BIA sees its mission today as just merely to stay in existence and nothing beyond that.

The mission of the BIA ought to be to work itself out of a job eventually. The report and management study go toward transferring power—money is power—from the bureaucracy to the tribes themselves. And in order to do that—and this gets me back to my opening statement—you have to have a Bureau of Indian Affairs that wants to do that. You have to have somebody running the Bureau of Indian Affairs who believes in that concept.

If you don't have somebody in charge of the Bureau of Indian Affairs, who believes that the Bureau ought to be there for technical assistance and not just to perpetuate itself, you don't have that. You can pass all of the laws in the world, which we are just proving with Public Law 93-638; the law passed with the best of intentions, but the designs and the best motives can be evaded and avoided by very skilled bureaucrats who see as their only purpose in life the maintaining of their own positions.

So it is extremely important that those people in policymaking positions in the Bureau have the intention and the desire to make the changes necessary to provide self-determination to the Indian people.

Do you want to comment? Do you agree or disagree with that?

Mr. **Trimble**. I agree entirely.

Chairman **Abourezk**. Joe.

Mr. **De La Cruz**. Mr. Chairman, our next panelist will be Mr. Jonathan Taylor, chairman of the Eastern Cherokee Band. John.

Chairman **Abourezk**. And one of the best cloggers I have ever seen. [Laughter.]

STATEMENT OF JONATHAN TAYLOR, EASTERN BAND OF CHEROKEE INDIANS

Mr. **Taylor**. Mr. Chairman, I am honored to get to sit before this committee and be in the company of two of the greatest Indian leaders that has ever served the two major Indian organizations.

I think that I go along with the good Senator when he says that now that Joe De La Cruz is president of NTCA that we will see progress.

Chairman **Abourezk**. Maybe they will stop attacking me for a change. [Laughter.]

Mr. **Taylor**. I have a written statement for the record? I am not going into the whole thing. I would just like to comment on some parts of Public Law 93-638.

Chairman **Abourezk**. It will be made a part of the record.

[The prepared statement of the Eastern Band of Cherokee Indians follows:]

THE EASTERN BAND OF CHEROKEE INDIANS
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Alice Lambert *Administrative Assistant* · **Robert Blankenship** *Tribal Planner* · **Patricia Smith** *EDA Secretary* · **Shirley Crowe** *Receptionist*

June 20, 1977

Mr. James Abourezk, Chairman
Senate Select Committee on Indian
Affairs
United States Senate
Washington, D. C.

Dear Sir:

As Principal Chief of the Eastern Band of Cherokee Indians and as the official spokesman for my people, I wish to address these remarks concerning Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, to the Senate Select Committee on Indian Affairs. As you may or may not know, I have on many occasions voiced my personal feelings of opposition to certain portions of this piece of legislation. My opinions are based almost entirely upon the conviction that my tribe is not yet ready or able to assume Bureau of Indian Affairs and Indian Health Service functions or responsibilities. It is my feeling that the Eastern Band is cautiously developing some experience and knowledge in the operation of a number of programs but not to the extent that we can successfully, economically and responsibly run either Bureau or IHS programs.

With regard to the Committee's specific questions in the listed categories:

Organization/Administration Issues - (1) the roles of Central and Area Offices and Agency for BIA and IHS with regard to the administration of 93-638 should be as it presently exists. The Central Office staff would be designated for technical assistance on site and on call whenever and wherever the need. The Area Office Staff would have a dual role or responsibility in that they would and should offer technical assistance when needed as well as acting as Grant Officer Representatives and Contracting Officer Representative. In as much as Area Director's and/or the Commissioner have the declination authority vested in their responsibilities, they must also have the other responsibilities. The Agency's responsibility on a Self-Determination activity should be monitoring and concurring with the reporting procedures agreed upon by the particular Tribe and its Area Office. This procedure would be identical for Grants and Contracts. (2) The question regarding trust responsibility and its interpretation and any confusion thereof have not been a problem for the Eastern Band or myself, therefore the question is not applicable to our situation (at this time). (3) With regard to the Intergovernmental Personnel Act, we have experienced some difficulty involving an IHS employee on loan

TRIBAL COUNCIL MEMBERS
Jonathan Taylor, *Chairman*; Dan McC[illegible] *Vice-Chairman*; Gerard Parker, Newman Arneach, Bertha Saunooke, Roy Blankenship, John C. Standingdeer, Wilbur Sequoyah, Thomas Lambert, Bailey Coleman, Gilliam Jackson, Joe Bradley, Charles F. Crate, *Door Marshal*; Eugene Littlejohn, *Janitor*; Sherman George, *Messenger*; Wenonah Digh, *English Clerk*; Maggie Wachacha, *Indian Clerk*; Mark Reed, *Interpreter*.

to the Tribe. Over a period of time we have been unable to maintain the
pay scales at the same rate as the employee would enjoy if he had continued
directly in the Federal system. A guarantee on the part of the Federal
Agency "loaning" the employee to assure that "step increases" as well as
legislated pay raises will be maintained for the employee would enhance
IPA actions to some extent. (4) The application process is perhaps lengthy
but certainly not complex, at least for the grant portions of this legislation.
The information that we have received from a variety of sources is that the
Training and Technical Assistance aspect of the act and the Contracting re-
quirements of the act are not particularly complicated. However, our pri-
mary objection to the legislation itself is based upon many other factors.
The main one being that in our opinion the Indian Self-Determination Act
of 1975 (PL 93-638) is a law that not only will do away with the Bureau of
Indian Affairs in a very short order, but also will terminate the Tribes of
this nation from governmental services. It is my feeling that once the
Bureau is eliminated from the Federal system there will be nothing and
probably no one in Washington to look after Native American interests and
programs.

Funding Allocation Issues: This issue is not relevant to the Eastern
Band's present situation as we are not involved in taking over any BIA or
IHS programs. Program funding and the limited flexibility of these funds as
well as the allocations that are allowed should be looked at very closely
for a number of reasons. For example, some funds simply cannot by law be
used in any other manner - Adult Vocational Training monies under PL 959 can-
not be used as supplement or complement to scholarship funds - in short it
becomes a matter of borrowing from Peter to pay Paul. Eventually, these
kinds of operations have a tendency to catch up with you and the results are
usually painful and embarassing. Certainly, program flexibility is a de-
sirable thing but only after very serious considerations of all possible
ramifications involved are given judgement.

While mentioning the words "serious consideration", "possible ramifi-
cations" and "given judgement", this comes to mind. I would like to mention
Doctor Demmert's plan for the reorganization of the Bureau's Educational
system and is directly related to the funding allocation issue. First of all,
as we read the plan we could envision these things happening; (a) Our system -
elementary and high school would be competing for the same allocated dollars
instead of working together co-operatively for a common goal, the education
of our children. This would be very detrimental as we see it. (b) The
funding level based on state funding allowances would be detrimental to our
school system because our state (North Carolina) ranks 39th in per pupil
expenditures. The proposed plan is very vague as to how budgeting increases
could be obtained but fairly explicite in that a Bureau operated school could
not lose more than 20% of its budgeting. In all truthfullness, we are not
interested in losing any program dollars; we would only like to stay even or,
perhaps, get ahead for a change. (C) At the present time, our Agency is having

a difficult time filling positions in teaching areas, and remember this is with Area Office clout! Can you imagine the nightmare that might develop when one office staff attempts to keep up with all the personnel needs of the entire Bureau. To say the least, it is an "Impossible Dream". (d) As we have pointed out previously our Tribe has had the opportunity to work with each branch rather than an Area Office and it is, indeed, most difficult. In those bygone days, the branch of Education, Central Office did not do an adequate job for our Tribe with only four elementary schools and one high school to operate. How could the Central Office do a better job with the responsibility for all of the Bureau's schools? It is our feeling this would be not a large step backward, but rather several large steps in the wrong direction. We feel our Advisory School Board, through community as well as Tribal Council influence, can and does effectively provide needed direction to our Bureau administered and operated school system. The school people have been very responsive to our expressed as well as felt needs and generally have been very co-operative. In fact, many of our programs have long been recognized as leading examples of how the Bureau can successfully operate an educational program. We are very proud of our system and will jealouslyguard it from negative influences such as the Demmert Plan for Reorganization. This digression very much relates to the funding allocation Issue of this report, but to specifically respond to the requested elements regarding the Band Analysis.

The points that were brought out concerning the exercise the Bureau affectionately calls "the Band Analysis" are well taken. We are in complete agreement that after the banding process is complete there is very definitely and inflexibility in program dollars which adversely affects reservation development and activities. We object profusely to the banding procedure and have gone on record with a Resolution so stating our position on this matter (attached copy of same).

Self-Determination Grants: We have had no particular problems with the inflexibility of the grant program as related to the "638 program" that we are participating in at the present time. Of course, part of this may be due to the fact that we gave our proposal and plan a great deal of thought and consideration so that we knew exactly what we wanted in program elements for our proposal. It might be assumed that other Tribes and organizations spend more time in meaningful deliberation and other constructive analysis to get exactly what they want from their program dollars. We are well pleased with our Tribal Operation Program as funded by 638 Grant monies and feel it is, in fact, an intergral part of our Tribal Government.

We are in complete agreement with the objections to the funding allocations being based on the population formula as indicated in the 1970 census. We contend that there have been dynamic population changes on the Indian Reservation in this country. The out-placement policies of the "old days" have been replaced by economic development efforts and job training for businesses, industries and enterprizes on the Reservations. Hence fewer people are leaving now and, in fact, in our area many are returning from elsewhere to make their livelihood. Interim population census procedures carried out by the individual Tribes and correctly certified by the necessary officials would provide a more up-to-date basis for allocations based on populations. Additionally it would provide many other useful tools with which to operate a modern Tribal Government. An example might be the redistricting of voting precincts or areas to assure adequate representation in our own political area. An Alternative of using projected birth rates versus projected death rates as related to a stable population figure would be more advantageous than using antiquated Census Bureau figures, but surely not as accurate in projection as the actual figures would be.

Contract Refusals for Insufficent Funds: We are contracting only the Indian Action Program under P.L. 93-638 and no other Bureau on-going activities and we have never experienced a refusal to contract on the basis of insufficient funding. We have had some experience with allocation reductions, but in most cases, major overhauls in the project proposal were not necessary, merely a rebudgeting process was required so that we would accomplish less than what we had intended to accomplish with some constraints on our part. The program or the end result have not appreciably been jeopardized.

Reservation Based VS. National Scope Contracts: I believe our position on this issue would be that 638 contracting mechanisms be limited to Reservation based programs and not national in scope. It would seem that the Indian Self-Determination Act was enacted to assist the Federally recognized Tribes and Alaskan Villages to carry out their own programs on the local scene and not to involve itself in too many other activities. Perhaps at some time in the future when each particular tribal group has solved all of its own problems, a little wider area of consideration might be advisable. Unfortunately, such is not the case today and I don't think it will be for quite some time. In my opinion, I do not think unanimous national support for any Indian program could be achieved.

638 Grants and Contracts and the Federal Domestic Assistance Programs: To address this portion of the testimony, again, I would refer to our own experience. A portion of the Indian Self-Determination grant program we are presently utilizing was developed so as to provide matching monies for a Title XX Grant or operational monies for the Qualla Indian Boundary's sheltered workshop. There was no problem or objection from the Bureau on the element for using the monies as a match. These funds have been dispersed to the workshop for their option of whether to use the funds for a match or operational expenses. I am told that the State of North Carolina's Offices of Human Resources have undergone an extensive rebudgeting procedure and all indications are that these funds will adequately cover our anticipated operating expenses for the next year and hopefully on into the future. In other words, the Bureau had no particular objections to the monies being used in this way but as things are turning out it would not have been necessary except as a "back up" resource.

In all honesty, I do believe we would have encountered some difficulties obtaining these funds (Title XX) through the regular and/or county programs. These funds are administered and dispersed by the county governments in our State and it would have been very difficult to get this enacted without experiencing political as well as legal problems. The delicate and fragile relationships that Tribal governments have with county and state governments are, it would seem continuously in jeopardy. If there is a recommendation that I could make in this regard it would be simply to create an Indian Desk to handle Title XX funded programs directly to the tribes rather than subject us to the political maze that we are continuously faced with in the present arrangement.

Sincerely,

EASTERN BAND OF CHEROKEE

John A Crowe
John A. Crowe, Principal Chief

PASSED

Cherokee Council House
Cherokee, North Carolina

JUL 08 1976
DATE

RESOLUTION No. 214 (1976)

WHEREAS, the Bureau of Indian Affairs' present system of budgeting allocation, Band Analysis is designed to utilize the Tribes' projections and priorities, at the time funds are appropriated, and

WHEREAS, the Bureau of Indian Affairs arbitrarily determines which programs will be included in the Band Analysis for any particular fiscal year, and

WHEREAS, Tribes are required to prioritize and project funding levels two years in advance of the allocation, and

WHEREAS, the Bureau of Indian Affairs encourages the Tribes to participate in the Band Analysis which sometimes results in a curtailment of a prioritized program.

NOW, THEREFORE, BE IT RESOLVED the the Eastern Band of Cherokee Indians in Annual Council assembled at which a quorum is present that the Eastern Band strongly opposes the "Band Analysis" as a means of funding Bureau of Indian Affairs' programs.

BE IT FURTHER RESOLVED that the Tribal Executive Committee is hereby authorized to recommend to the Bureau of Indian Affairs that a new method and procedure of funding Bureau of Indian Affairs' programs be instituted.

BE IT FINALLY RESOLVED that the Eastern Band of Cherokee Indians request that the Bureau of Indian Affairs extend to Tribal Officials and local Bureau of Indian Affairs officials the privilege of the opportunity to have imput in establishing a new procedure for funding priorities of Bureau of Indian Affairs' programs.

Mr. Taylor. I, too, agree there that the bureaucrats use Public Law 93–638 as a tool against the Indians. We were one of the few tribes, I guess, Mr. Chairman, that was opposed to Public Law 93–638.

We felt in our own mind, Mr. Chairman, that Public Law 93–638 was just one phase for terminating Indian tribes. I think that the Bureau and Indian Health Service still has trust responsibility down there and we want to keep them under that responsibility as long as we can.

We know, Mr. Chairman, anytime that you want to, you can't cut a contract. But our treaty rights says that the Government will give us a hospital and educate our children.

One of our highest priorities, Mr. Chairman, is education. We feel that we can educate our people. We have agreed that we are living in the white man's world, but through education, I think we can take our place in that world, and I believe we are going to.

There are some parts of Public Law 93–638, like I say, I think has been used as a tool. Last year, we couldn't get teaching positions on our reservation in that new school that you all seen fit to build for us down there. We went through the whole year of school without any teachers showing. But when you start raising hell with the Bureau, what do they say? "You can always contract," and that we don't want to do at this time.

In our statement, we are telling your committee that we are not ready to contract the services on our reservation. We will back any other tribe that wants to do it, if that is what their tribal people want, but we would like for you to take our testimony, and look at it real close. I think we have got some good ideas.

The band analysis is one of the damndest things ever been put on the Indian people. [Laughter.]

They say we told them we need more money in education. So we got $100,000 next year, Mr. Chairman, but damn if they didn't take it out of roads. You can't get your children over to a $9-million school over 50 cents worth of roads. [Laughter.]

I believe the chairman will agree with me on some of these points. I have worked close with NTCA and the National Congress of American Indians and I think they are two good organizations, but then Mr. Chairman, we have the Bureau getting one organization to fight with the other one. If you don't believe it, come down and live with us sometime. [Laughter.]

They spend all their energy fighting each other when they should be trying for the good of the tribal people. Mr. Chairman, I would like for you to take this, go over it and I would like to thank all of the members for letting me say a few words. I am not a long speaker like the other two. [Laughter.]

But I believe I have made my point, Mr. Chairman, and I thank you.

Chairman Abourezk. Thank you. [Applause.]

The one criticism I have had of Ed Taylor over the years is that he waffles on these issues. [Laughter.]

He will never speak directly to them, Joe.

Mr. De La Cruz. Well, Mr. Chairman, you can see I am not afraid of taking any arrows in my back, sitting on my right hand, a man like Ed Taylor [laughter] and as we go through this time, you will find that there is no division in Indian country today.

The next panelist—we are all picking on the Bureau—I would like to move the mike on down to my right and have the chairman of Pit River Rancheria speak on the Public Law 93–638 issues in regards to Indian Health Service, Aaron Forrest.

STATEMENT OF AARON FORREST, CHAIRMAN, HEALTH COMMITTEES, NATIONAL CONGRESS OF AMERICAN INDIANS AND NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION

Mr. Aaron Forrest. Mr. Chairman, my name is Aaron Forrest. I serve a unique position in that I chair both the health committees of the National Congress of American Indians and the National Tribal Chairman's Association.

I was particularly interested in the comments made about the Bureau implementation of 93–638. I would have to say the Bureau has done a hell of a lot better job than the Indian Health Service has done.

I am also, by the way, the author of the letter that you discussed with Dr. Johnson at your previous hearing.

Chairman Abourezk. Aaron, why don't you relate that incident? I think a lot of people here have not heard it and it would be interesting.

Mr. Forrest. All right. I think it is most interesting that while the Bureau may have delayed and detained and obstructed their process of considering the grant and the contracts proposals, the Indian Health Service came out with an entirely new and unique kind of a tack and that is to completely ignore our proposals.

Chairman Abourezk. What is new about that? [Laughter.]

Mr. Forrest. We really haven't been able to get anywhere with it. As I indicated in my letter, I have a proposal for grants since May 1976. Other than the initial response within 5 days that the grant had been received at the local office, I have heard absolutely nothing about that officially.

I understand that since you took recent testimony in Washington, Indian Health Service is scrambling to try to find some letters that might have been given and that they didn't respond to. But they won't find them because they didn't.

Also have an application for contracting September 6, and to this date I still haven't heard what is wrong with that proposal or what terms it has, et cetera.

Another interesting thing that I didn't mention in my letter was the fact that while we initially requested to make application for grants and contracts, Indian Health Service decided that maybe California wasn't eligible under 93–638 so there was a long delay in getting a legal opinion from legal counsel in HEW to determine whether or not California tribal governments were eligible for 93–638.

Chairman Abourezk. I think you left out one important part. When the Indian Health Service testified before this committee on 638, I asked them if they had ever turned down a tribe on a Public Law 93–638 contract; they said "No." And then I brought up the question of the 9 month application that you had had, and it was learned that, through testimony, that that was a way to avoid turning down contracts. [Laughter.]

Mr. **Forrest**. Yes. By the way, I wasn't the only one who had made an application at that time. There were several tribal applications from California that have gone through the same process or the lack of process that my application did.

Chairman **Abourezk**. I know they have gone to another phase. Aren't they now asking whether or not you are a tribe?

Mr. **Forrest**. That is right. With my particular tribe, that is what they are doing. I think, you know, as I indicated earlier, that the BIA has many faults, but at least in California, we have been able to get grants from the BIA. We are in the second round of grants. And we have received absolutely nothing, not even an official response to proposals in California.

To go on with this, I haven't been here in the last 2 days; however, I note that the National Congress of American Indians and the National Tribal Chairman's Association have developed a joint health committee report which bears my name. I wasn't here. However, I concur with the report and I would like to read it. It is very short.

> Indian Health Service simply added Public Law 93–638 into the field health activity financial coding system; commingling of funds in this fashion makes it difficult to account for Public Law 93–638 funds.

It may very well be that the Indians' funds, the applications which say that they don't have any money, that the money is misplaced somewhere or it is used for other purposes. I suspect that this is part of the problem.

> Public Law 93–638 appropriations have become, in the Indian Health Service, slush funds. Because of a lack of national direction, field offices of Indian Health Services have been left to devise their own interpretations and implementation plans. As a result, there is considerable variation in the program from one area to another. The significance of implementation of the intent of Public Law 93–638 cannot be over-emphasized. Public Law 94–437 is to be implemented with Public Law 93–638 authorities. Thus, Indian Health Service's failures to implement Public Law 93–638 appears to be delivery. We have read the statement and the answers to the questions submitted to the Indian Health Service. We are concerned with the implementation of Public Law 93–638 because this should be the process by which Indian Health Service deals with tribal governments. Unfortunately, we find that Indian Health Service prefers to use authorities other than those in Public Law 93–638. It appears that Indian Health Service relies upon the Bureau of Indian Affairs to supply leadership in the implementation of Public Law 93–638. This has resulted in a general lack of direction in the implementation of the Act. We detect severe resistance to tribal control and regulation for the delivery of health service to tribes.
>
> Indian Health Service has three major problems with administration of the Act.
>
> Number 1, a lack of an implementation plan for Public Law 93–638.
>
> Number 2, a lack of organized tribal input into implementation of the law.
>
> Number 3, a lack of accountability.
>
> We find resistance on the part of Indian Health Service to recognize and deal with tribal governments. Tribal control is resisted.
>
> Public Law 93–638 is very specific in terms of tribal input into implementation of that law. Indian Health Service has ignored this portion of the law. Thus, Indian Health Service attempts to circumvent the law have significant impact on the implementation of other legislation.

This is a statement, jointly, by the Health Committees of the National Congress of American Indians and the National Tribal Chairman's Association.

I would just like to add one other comment before you might ask some questions of me—and that is that I have worked very close to

Indian Health Service, particularly with Indian people during the last 2 years and my personal opinion is that the office charged with implementing 638 is incapable of implementing the law.

Chairman ABOUREZK. Thank you very much.

Mr. DE LA CRUZ. We have our final panelist. I imagine there are a lot of Bureau people in the audience and I think we should go on record today that they are not going to divide Indian people and they had better get on the bandwagon with us and straighten this mess out.

Our next panelist is the Honorable Chairman of the Navajo Nation, Mr. Peter MacDonald.

Chairman ABOUREZK. Peter, welcome to the Committee.

STATEMENT OF PETER MacDONALD, CHAIRMAN, NAVAJO NATION

Mr. MACDONALD. Thank you Joe and Senator Abourezk. Mr. Chairman, members of the committee, staff, ladies and gentlemen: It is always a pleasure to speak before a congressional committee concerned with Indian affairs. Although, over the years, I have spoken out forcefully for some sort of change against BIA—and sometimes it might sound redundant—but the only reason why it is that way is that they continue to remain in a situation that we have found them ever since 100 years ago.

But today, I want to express my thanks to have this opportunity to speak about our experience with Public Law 93–638. I am afraid you won't like much of what I have to say but you are here to learn the truth, and we are here to tell it.

What we believe that led to the Indian Self-Determination Act was the congressional realization that programs designed to help our people were failing to accomplish their objectives. Whether we are talking about housing, roads, Indian employment or education, report after report, study after study and congressional committee after committee, reached the conclusion that things were bad and needed change. So what happened?

What really happened was a gross subversion of congressional intent behind the Indian Self-Determination Act; neither the letter nor the spirit of the act are being carried out, as we have heard here from testimonies of the Indian leaders.

In fact, the act is being used as an excuse to build a bigger and bigger Federal bureaucracy. The act was intended to reduce the size of Federal bureaucracy and increase tribal participation, increase tribal personnel to administer the programs they designed for themselves through the contracts.

You may know or may not know that there are now approximately 19,000 BIA employees administering a $600 million budget. Since the act was passed, the number of BIA positions have increased substantially.

It is shocking to know that it takes 19,000 BIA employees to administer $600 million in programs; whereas it takes only 31 Department of Labor employees to administer $200 million in Indian CETA funds. None of the 31 employees are charged off against Indian appropriations.

On the other hand, all of the 19,000 BIA employees are charged against Indian appropriations. The BIA is and has remained a surrogate local government interposed into the Indian community which leaves us with little more than ceremonial ,functions for authentic tribal government.

Just imagine if South Dakota was operated and controlled by the Federal work force: Federal doctors, Federal nurses, Federal bankers, Federal teachers, Federal range managers, Federal personnel, Federal technicians, Federal road construction workers, and on and on and on. Think how you would like it if every governmental function on the local, county, and State level was carried out by Federal employees selected, evaluated and rewarded by Federal officials who were both foreign to and remote from your community and your State.

In fact, suppose they only came to South Dakota as tourists to visit and collect souvenirs? [Laughter.]

Well, that is how it was and that is how it still is.

As for contracting out: The BIA first claimed it lacked the authority. Now that it has authority, it still fails to exercise it to achieve Indian self-determination.

I know that BIA can claim that they have signed lots and lots of contracts, contracts such as: contracts to hand out eyeglasses, contracts to sweep floors, contracts to give welfare checks to the poor, contracts to pick up trash, and on and on.

Hardly any of these contract items leads to Indian self-determination, as we envision it. They are legally a procurement process to do certain work.

The Bureau is incapable of carrying out Congress' mandate. We know that because, for over 100 years, its real mission has been to increase the bureaucracy. It is hardly likely that it will commit suicide now or even sacrifice a lamb. At best, they will trim fingernails and hair—that is all. [Laughter, applause.]And, Mr. Chairman, that is how Government contracts under 93–638 have really been and still are.

I would propose, as the first essential step to remove the contracting function from the BIA, perhaps an independent contracting office would be created to receive and process self-determination project proposals from the Indian tribes.

The office then should be evaluated on the basis of quantity and quality of the contract proposals processed. The old defense, quote, "The Indians aren't ready yet" should be eliminated. Mere numbers and dollars are meaningless when you still have over a 19,000-man occupation army living off the moneys that are supposed to help Indian people achieve self-determination.

Even if the program diminishes, as we find out, in size the number of bureaucrats remains the same. For instance, employment assistance programs still have over 500 Federal bureaucrats even though it has been reduced from $32 million to $24 million.

So contracting out has become synonymous with foisting on the Indians responsibility for repeating the mistakes of the past with no flexibility to learn from the failures of the past. There is no room for innovation, no room for the flexible use of money to reach agreed-upon goals. In fact, the tribes are asked to become the puppets of a bureaucracy that never admitted its own failures and now wishes to make the tribal governments repeat the same mistakes and assume responsibility for inevitable ,failures.

At a time when Federal programs for State and local governments have moved in the direction of block grants and revenue-sharing, contracting out has been used by BIA to back tribal governments into the straitjacket of categorical programs of the past.

Beyond that, the Self-Determination Act has not brought about the kind of support for tribal governments as envisioned. A different kind of support is needed to give tribal governments adequate management capability and adequate resources to plan and move toward self-determination.

The typical example that comes to my mind is the response of the Interior Department, just recently, to the attempt by energy-resource-owning tribes to get the kind of technical assistance and funds needed to convert the bad leases and bad management of its resources by BIA to a positive and knowledgeable control of its own resources.

The Secretary of the Interior and its people asked the coalition of energy resource tribes if they really knew what they were doing when they formed an organization to protect their resources and to ask for funds and technical assistance to manage these resources so that they would have a future and that the tribes and their members will have a future. They questioned even the legality of the CERT organization. With this kind of mentality, from the highest level possible, we wonder if Indian self-determination is really going to take hold.

To give you another example: BIA, for 3 years, has delayed approving a Navajo-Exxon joint venture which was totally developed by the Navajo Tribe. After 3 years of review, the BIA concluded that it was a good idea.

In the meantime, the Navajo people were deprived of the use of over $6 million they so desperately needed. Again, all BIA provided was a delay that benefited no one and was terribly injurious to the tribe.

Just yesterday, the National Wildlife Federation obtained an injunction against the construction of a 23-megawatt dam we need to lift water for the Navajo Indian irrigation project. What were the grounds? Simple.

Congressional authorization was provided for a 15-megawatt dam. Over a 17-year period, the BIA proceeded to promise and delay the construction of any dam. Now we find that BIA has no authority to continue.

If this agency doesn't even know the scope of its own authority, how is it that it is supposed to help the Indians?

Mr. Chairman, I have a more detailed statement to submit to you, with examples and some of the recommendations, but the recommendations suggest the thorough review of this Public Law 93–638 with certain things in mind that have been expressed here by the tribal leaders.

We desperately need flexibility.

We definitely need more money in the program to provide Indian tribes to really move in the direction of self-determination.

I want to thank you for the time here. If there are any questions, I can answer them and, also, I would like to request that I submit this detailed written testimony for the record.

Chairman **Abourezk**. That will be placed in the record in full.

[The prepared statement of Peter MacDonald, chairman of the Navajo Tribe, follows:]

Testimony of Peter MacDonald
Chairman of the Navajo Tribal Council
Before the
Senate Select Committee on Indian Affairs
Oversight Hearing on Public Law 93-638
June 24, 1977
Albuquerque, New Mexico

THE INDIAN SELF-DETERMINATION ACT: PROMISE AND DISAPPOINTMENT

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to speak about our experience in the Navajo Nation with Public Law 93-638. I am afraid you won't like much of what I have to say, but you are here to learn the truth, just as we are here to tell it.

We meet today to celebrate yet another failure in Federal Indian Policy -- the so-called "Indian Self-Determination Act."

In the grand tradition of Helen Hunt Jackson's "A Century of Dishonor", in the tradition of the Meriam Report which, after almost 50 years still represents the best unfulfilled plan for Indian Development, and in the tradition of Harold Ickes famous letter to employees of the Indian Service of April 30, 1934, the Indian Self-Determination Act was a good idea which never had a real chance of success.

What led to the Act was the Congressional realization that programs designed to help our people were failing to accomplish their objectives. Whether we are talking about housing, roads, Indian employment or education, report after report, study after study and Congressional Committee after Committee reached the conclusion that things were bad and needed change.

So what happened?

The Self-Determination Act gave to the self-same bureaucrats whose conspicuous failure had led to the Act, the responsibility for determining how Tribes might try to accomplish what these same officials had already failed at. Thus, those with a proven record of failure were to judge and "guide" those who would try to succeed.

The built-in bias for letting us fail guarantees that we will fail. The built-in bias for doing things the way they always have been done -- wrong -- guarantees that they will continue to be done wrong. The built-in bias of having the blind lead the untrained with no motive to have the trainees succeed, and no ability in the skills necessary to train make failure, by any standard, a foregoing conclusion.

Surely this is not what the Federal government and many American people really want.

Successful Indians -- in business, in politics, in government or just around makes non-Indians nervous. Some people seem more comfortable when we Navajos are making rugs, or silverwork or looking quaint or herding sheep -- if we don't have too many sheep, but they are nervous when we sit down with the OPEC nations, or vote or send our people to state legislatures or county commissions or boards of supervisors.

Indian self-determination under the Act, the regulations, and most importantly, the entrenched bureaucracy is a bad joke.

True self-determination is any group of people using resources for programs they design and carry out. We don't need the BIA or the IHS to be tolerant about our running programs that they have administered for years. That's not tolerance. That's not self-determination.

Sometimes I feel that the BIA and IHS look at us like a child on an exercise bike with a speedometer. The child keeps saying, "I'm not getting anywhere" and the parent points to the odometer and says, "Yes, but look how far you've come."

Well, we're tired of treadmills, exercise bikes and fake self-determination. If you want to show tolerance for us and our ideas and programs then give us the money -- the wherewithal to try our own solutions to long-standing unsolved problems and leave us alone for a while.

We're willing to be judged in terms of the goals we set for ourselves and if we fail, don't give us more money.

I really believe that our failure is central to America being comfortable about its Indian citizens. As long as we are poor and quaint, our "protectors" seem willing to support us at a level that while we don't starve, we never get indigestion either.

Well, we're tired of being poor and quaint and the sooner everyone realizes this the sooner we can talk to each other with honesty and frankness and mutual respect.

Sure, self-determination is a good idea, but being an Indian means having a six-foot shelf of ideas -- I've got two six foot shelves in my office of projects which never have gotten off the ground. You can't eat projects, you can't sleep in them and unless you're a consultant they provide no employment or anything else.

In short, let's get serious about self-determination or let's not pretend any more. If you want to enable us to try to do our own thing and take the risk that we may succeed, then provide the money without the strings, provide the personnel for us to deal with those who aren't experienced in failing and then let us alone.

I don't promise success, but who knows maybe we might succeed in some areas. Given all the money this government wastes, isn't such a program a prudent investment. Prudent or not, Indian expenditures are not and never have been a significant portion of the federal budget.

In your letter of invitation, Mr. Chairman, you state that "the intent of the law is to allow tribes and Indians groups . . . authority to assume through contracts [emphasis added], the administration of a variety of governmental services from the [BIA and IHS]." That statement goes to the heart of the matter, the fundamental problem we have with Public Law 93-638. The law is not, primarily or even intentionally, a vehicle for the achievement of self-determination; it is, primarily, a mechanism which "allows" tribes to run programs which the Bureau or IHS has, presumably, failed to administer to Indian peoples satisfaction. The mechanism is one which the Federal Government ordinarily uses to procure pencils, vehicles, guided missiles, etc. By entering into a contract, the tribe (or authorized tribal organization) binds itself to perform to the satisfaction of the Federal Government a service which those who will now monitor the tribe's performance had not themselves been able to perform effectively.

There are other provisions in "638," to be sure. There is even a slight amount of additional funding, through the "Self-Determination grant" program. IPA assignments and "1834 Act" assignments of BIA and IHS employees are possible, and have been used. Technical assistance is presumably available, although we have found the Bureau's technical assistance less useful than using the funds for it ourselves. But the real focus has been on contracting. In fact, perhaps the Act might be renamed as The BIA and IHS Contracting Act. That is, of course, not a recommendation. Let me first deal with specific issues raised in your letter, Mr. Chairman, and then provide an overall suggestion which I think would, if approved by Congress, be a step in the direction of real self-determination.

1. Organization/Administration.

a. In our experience, the rules and regulations for Public Law 93-638 have been implemented in different ways by the Bureau and the Indian Health Service. Generally, the BIA's contracting procedures, although longer and more cumbersome than necessary, have been realitively clear, allowing the Tribe to develop parallel mechanisms for insuring somewhat timely action. The Indian Health Services regulations, and local IHS procedures, have evolved more slowly, and appear to be designed to thwart or delay timely contracting. In Navajo Area, IHS has set up a review board to screen proposed contract applications even before the Tribal Council has authorized application for a contract. Moreover, nowhere within the Indian Health Services contracting procedures is there a clear statement of what, in fact, is contractable. This, coupled with the vagueness of IHS's budget, has kept the Navajo Tribe in the dark about the full scope of IHS programs and services.

b. Within IHS, moreover, there's a tremendous degree of centralization. Every major contract application appears to require the approval of IHS Headquarters. Very little real power has been delegated to the Area level, which results in further delays.

2. Funding Allocation.

a. For contracts, there simply is not enough money available to allow tribes to do the job right. Although, presumably, the use of the "Band Analysis" process would allow the Tribe the opportunity to insure that enough money is present in a program before contracting it, this is a process that requires tremendous lead time, which is seldom if ever provided, and much more advance information than we have been able to attain from the Bureau and our own sources to establish proper funding levels. Public Law 93-638 does not provide a way for tribes to make meaningful input into the BIA and IHS budgets. And, although we at least have the limited "Band Analysis" tool for the Bureau, there apparently exists no way for obtaining Tribal input into the IHS budget. We are simply unable to discern how and why Navajo Area is allocated IHS funds. And IHS has not been able to provide the Tribe with an Area budget. Thus, our Tribal Council deliberations are reduced to meaningless discussion of what "might be."

b. The "contract support" line item in the Bureau's budget is insufficient. Funds for the additional administrative and indirect costs of tribes required to run these programs are simply inadequate. The basis for their allocation is, in addition, unclear. Whether these funds are to be used for additional Bureau expenses, as well as Tribal expenses, is equally unclear. Further, the Bureau's accounting system has not been adequate to provide the data needed for the Tribe to know what funds (program and "contract support") are available, and what can realistically be planned for.

In the JOM program (which the Tribe has contracted to administer this year for the first time), for example, a firm "Advice of Allotment" figure was not made available to the Tribe until April of this year; every time the figure changed (usually downward), the Tribe was required to modify 22 subcontracts with school districts in Arizona, New Mexico and Utah. Thus, contracting this program relieved the Bureau of a tremendous burden (the BIA had not been able to process contracts with the school districts earlier than 5 or 6 months into the school year), but the Tribe, because of BIA inadequacies, was unable to do any better.

Questions about the appropriation source of funds often clouds the picture as to what funds are available. For instance, the Tribe contracts the JOM program under the authority of Part 271 of the Public Law 93-638 regulations.

As you know, this Part gives overall policy-making authority to the Tribal governing body, in this case the Navajo Tribal council. The Tribe, then, contracts with the schools under the authority of Part 273, which places control of JOM program funds entirely within the hands of Indian Education Committees. Because the Bureau was unable to make sufficient funds available to the Tribe from its ordinary education money, and because the Bureau and the DOI Solicitor, have been unable to agree as to the Tribe's right to use any JOM funds for administering the program, a situation has emerged wherein the Tribe's right to use JOM funds for administrative purposes is subject to the approval of the 22 local Indian Education Committees. This has created unnecessary antagonism between the Tribe and the IEC's which could have been avoided had BIA provided, in the contract, for the costs of the

Tribe's administration of the program from non-JOM education funds. A solution to this problem might be to change the regulations to provide that the authority of the Tribal governing body to authorize contracting under "638" extends to the ability of the Tribe to recover justifiable direct and indirect costs of administering those programs authorized under Parts 272 and 273.

(Short of an immediate resolution to this problem, we are seriously considering retrocession of the JOM program to the Bureau, with the stipulation that the BIA itself attempt to operate the program without administrative costs.)

3. Relationship to other Federal Programs.

Public Law 93-638 applies to only the BIA and IHS. Within the BIA, authority extends only to those programs which "the secretary is authorized to administer" for the benefit of Indian people, and excludes contracting the Bureau's "trust responsibility." A recent letter to me from the BIA Area Director admits that "Public Law 93-638 regulations guidelines for implementing remain vague as to the mechanics of this compatibility [between trust responsibility and Public Law 93-638] as it relates to the land and the products of the land - forest, minerals, oil, gas, etc. -- this vagueness is a hinderance, not only to the Tribe which desires to contract trust programs but to BIA staff in their efforts to meet thtie responsibilities while supporting the spirit and intent of Public Law 93-638." Clarification of the meaning of the "trust responsibility," as I have often said, is desperately needed.

Is a revision possible to Public Law 93-638 which would extend its application to the authority of tribes to receive funding directly from other federal departments? Could an "umbrella" provision be inserted making Indian tribes, at their option, eligible to receive direct federal funding (rather than through states) for all programs listed in the catalog of Federal Domestic Assistance for which other governments are eligible? Could Public Law 93-638 be amemded to guarantee to Indian tribal governments the same direct access to federal programs that is enjoyed by units of state and local governments? These questions compel a final, overall recommendation.

RECOMMENDATION

"638," as the "Contracting Act," allows tribes to get money to administer formerly federal programs, but does little to move tribes toward true self-determination. But other provisions of the Act and Regulations allow tribes to "plan, replan, design and redesign" Bureau programs in order to make those programs meet tribal needs and priorities. The Bureau and the IHS have no mechanism for providing effective assistance to tribes in carrying out such redesigning.

The Navajo Tribe has this year initiated a program which ties expenditures of all funds administered by the Tribe to the accomplishment of tribally-developed objectives. We are attempting to extend that process to planning for the use the

$42 million of Bureau programs which the Tribe currently contracts, and several million dollars of IHS programs. And yet, because we are locked into the contracting mode, we are unable to fit these programs suitably into a broad scheme for meeting tribal goals.

To correct this, changes will be required in the Bureau budget process and in the language of "638." A primary means through which state and local governments receive federal funding to carry out programs to serve their citizens is grants. The grant mechanism allows greater flexibility in the design and conduct of programs, and puts the federal grant making agency in much more of an "arm's length" relationship to the local or state governmental entity. If the $42 million that the Navajo Tribe contracts from the BIA this year were to become a single line item in the Bureau's budget for FY 1979, and were to be set aside as an entitlement to the Navajo Tribe, to be awarded upon submission of a plan for its use, taking into account all the other needs of the Navajo Tribe and the resources available to it, we would, for the first time, be able to use these funds for purposes related to Tribal priorities, rather than continuing to accommodate the self-protective instincts of a federal bureaucracy.

This recommendation, I realize, would involve a radical restructuring of the BIA Budget process, and an amendment to "638" which would remove Tribal governments from the restrictive practices inherent in the contracting system. It would be a much desired beginning to treat tribes in much the same way as other state and local governmentsl entities are treated by other federal funding agencies. This would signify a recognition that Indian Tribal governments are a permanent element of the American intergovernmental system, and not a temporary aberration.

These are big steps, but I urge you to take them if this "638" is truly to be a "self-determination" act for Indian people. Thank you very much.

Testimony of Peter MacDonald
Chairman of the Navajo Tribal Council
Before the
Senate Select Committee on Indian Affairs
Oversight Hearing on Public Law 93-638
June 24, 1977
Albuquerque, New Mexico

The Indian Self-Determination Act: Promise and Disappointment

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to speak about our experience in the Navajo Nation with Public Law 93-638. I am afraid you won't like much of what I have to say, but you are here to learn the truth, just as we are here to tell it. In your letter of invitation, Mr. Chairman, you state that "the intent of the law is to allow tribes and Indian groups ... authority to assume through contracts [emphasis added], the administration of a variety of governmental services from the [BIA and IHS]." That statement goes to the heart of the matter, the fundamental problem we have with Public Law 93-638. The law is not, primarily or perhaps even intentionally, a vehicle for the achievement of self-determination; it is, primarily, a mechanism which "allows" tribes to run programs which the Bureau or IHS has, presumably, failed to administer to Indian people's satisfaction. The mechanism is one which the Federal Government ordinarily uses to procure pencils, vehicles, guided missiles, etc. By entering into a contract, the tribe (or authorized tribal organization) binds itself to perform to the satisfaction of the Federal Government a service which those who will now monitor the tribe's performance had not themselves been able to perform effectively.

There are other provisions in "638," to be sure. There is even a slight amount of additional funding, through the "Self-Determination grant" program. IPA assignments and "1834 Act" assignments of BIA and IHS employees are possible, and have been used. Technical assistance is presumably available, although we have found the Bureau's technical assistance less useful than using the funds for it ourselves. But the real focus has been on contracting. In fact, perhaps the Act should be renamed: "The BIA and IHS Contracting Act." That is, of course, not a recommendation. Let me first deal with some of the specific issues raised in your letter, Mr. Chairman, and then provide an overall suggestion which I think would, if approved by Congress, be a step in the direction of real self-determination.

I. Organization/Administration.

a. In our experience, the rules and regulations for Public Law 93-638 have been implemented significantly differently by the Bureau and the Indian Health Service. Generally, the BIA's contracting procedures, although longer and more cumbersome than necessary, have been relatively clear, allowing the Tribe to develop parallel mechanisms for insuring timely action. The Indian Health Services regulations, and local IHS procedures, have evolved more slowly, and appear to be designed to thwart or delay timely contracting. In Navajo Area, IHS has set up a review board to screen proposed contract applications even before the Tribal Council has authorized application for a contract. Moreover, nowhere within the Indian Health Services contracting procedures is there a clear statement of what, in fact, is contractable. This, coupled with the vagueness of IHS's budget, has kept the Navajo Tribe in the dark about the full scope of IHS programs and services.

b. Within IHS, moreover, there is a tremendous degree of centralization. Every contract application over $100,000 requires the approval of IHS Headquarters. Very little real power has been delegated to the Area level, which results in further delays. Further, all IHS grants require such approval, regardless of their size.

II. Funding Allocation.

a. For contracted programs, there simply is not enough money available to allow tribes to do the job right. Although, presumably, the use of the "Band Analysis" exercise would allow the Tribe the opportunity to insure that enough money is present in a program before contracting it, this is a process that requires tremendous lead time, and much more advance information than we have been able to attain from the Bureau and our own sources to establish proper funding levels. Public Law 93-638 does not provide a methodology for tribes to make meaningful input into the BIA and IHS budgets. Moreover, although we at least have the limited "Band Analysis" tool for the Bureau, there apparently exists no way for obtaining Tribal input into the IHS budget. We are simply unable to discern how and why Navajo Area is allocated IHS funds. And IHS has not be able to provide the Tribe with an Area budget.

b. The "contract support" line item in the Bureau's budget is insufficient. Funds for the additional administrative and indirect costs of tribes required to run these programs are simply inadequate. The basis for their allocation is, in addition, unclear. Whether these funds are to be used for additional Bureau expenses, as well as Tribal expenses, is also not clear. Further, the Bureau's accounting system has been simply incapable of providing the data needed for the Tribe to know what funds (program and "contract support") are available, and what can realistically be planned for.

The Navajo Tribe contracted for the total administration of the Johnson O'Malley Program in August 1976, and this program provides a good example of several problems facing the Tribe. A firm "Advice of Allotment" figure was not made available to the Tribe until the end of April of this year; every time the figure changed (usually downward), the Tribe was required to modify 22 subcontracts with school districts in Arizona, New Mexico and Utah. Thus, contracting this program relieved the Bureau of a tremendous burden (the BIA had not been able to process contracts with the school districts earlier than 5 or 6 months into the school year), but the Tribe, because of BIA inadequacies, was unable to do any better.

Questions about the appropriation source for funds often cloud the picture as to what funds are available. For instance, the Tribe contracts the JOM program under the authority of Part 271 of the Public Law 93-638 regulations. As you know, this Part gives overall policy-making authority to the Tribal governing body, in this case the Navajo Tribal Council. The Tribe, then, subcontracts with school districts under the authority of Part 273, which places control of JOM program funds entirely within the hands of Indian Education Committees. Because the Bureau was unable to make sufficient funds available to the Tribe from its general education money (3100) and because the Bureau has not up to now agreed to the Tribe's use of any JOM funds for administering the program, the Tribe's right to use JOM funds for administrative purposes has been subject to the approval of the 22 Navajo Indian Education Committees. * Just this week a meeting was held with the DOI Solicitor who rendered a decision that the Tribe does not need I.E.C. approval; however, the situation has created unnecessary antagonism between the Tribe and the IEC's which could have been avoided had BIA provided, in the contract, for the costs of the Tribe's administration of the program from non-JOM education funds. A solution to this problem may lie in a change in the regulations which would assert that the authority of the Tribal governing body to authorize contracting under "638" extends to the ability of the Tribe to recover justifiable direct and indirect costs of administering those programs authorized under Parts 272 and 273.

(Short of an immediate resolution to this problem, incidentally, we are seriously considering retrocession of the JOM program to the Bureau, with the stipulation that the BIA itself attempt to operate the program without administrative costs!)

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* In the negotiations of the prime JOM contract several of the Bureau of Indian Affairs negotiators contended that all Johnson O'Malley funds were program monies, requiring approval by each of the 22 Navajo IEC's located in the states of Arizona, New Mexico, and Utah of the administration budget.

At this point, negotiations between the Navajo Tribe and the BIA stopped. The Navajo Area DOI Field Solicitor assured all parties that he would provide a decision on the matter as soon as possible. Several days later Tribal negotiators were notified that a decision had been reached that the Navajo Tribe did not need prior approval from the IEC's to negotiate the administration budget. Upon completion of the prime Johnson O'Malley contract, the Navajo Tribe proceeded with the 22 Johnson O'Malley subcontracts.

Then, on December 28, 1976, the Tribe received a letter from the Navajo Area Office Acting Area Director, James D. Cornett, notifying the Tribe that the JOM administration budget must receive approval and endorsement from each of the 22 local Johnson O'Malley Indian Education Committees. On March 9, 1977, the Tribe received another letter from Acting Area Director Ted S. Koenig, which reaffirmed the December 28, 1976 letter, stating that IEC's have the "authority and power to plan and commit funds for programs," and that IEC approval was needed for a portion of the present administrative costs.

c. IHS "638" funding becomes complicated in part because IHS has never received a Congressional appropriation for "638" activities. Instead, "638 funds" are allocated at the IHS Director's discretion from the operating budget. This fact, coupled with the lack of definition about what is contractable, results in a situation wherein no funds are necessarily subject to the Public Law 93-638 regulations!

IHS has not clearly identified who in the Area Office or Headquarters is responsible for approving contracts and grants. Thus our proposals have been shuffled back and forth from Navajo to Washington, with Area and Headquarters IHS staff identifying each other as the responsible party.

Funding available to the Navajo Nation for "638" purposes in FY 1977 was never made clear. The Tribe was informed in December 1976 that $1.4 million would be available but had to be rushed into proposals by March 1977. No guidelines were available, however. This did not allow for sufficient time for proper preparation of quality proposals. Moreover, the Tribe learned in February 1977 that the Navajo Area actually was allocated $2.4 million for "638," but that only $1.4 million was definitely available to the Tribe, and the remainder was to go to the Navajo IHS Area Office for "self-determination" purposes.

Finally, the Tribe submitted its "638" grant "pre-applications" to IHS in April 1977, and, after four (4) meetings with the Navajo Area Office, "final" proposals were submitted to Navajo Area on May 25, 1977. These have been "modified" twice since then and are today still not in Washington for "final approval," (if that is where "final approval" actually occurs). If this is indeed the "final approval" stage, the Tribe's "pre-proposals" and "final proposals" are now on their way to Washington for the third and, hopefully final, time. Surely, there must be a better way!

III. Relationship to other Federal Programs

Public Law 93-638 applies to only the BIA and IHS. Within the BIA, authority extends only to those programs which "the Secretary is authorized to administer" for the benefit of Indian people, and excludes contracting the Bureau's "trust responsibility." A recent letter to me from the BIA Area Director admits that "Public Law 93-638 regulations guidelines for implementing remain vague as to the mechanics of this compatibility [between trust responsibility and Public Law 93-638] as it relates to the land and the products of the land - forest, minerals, oil, gas, etc. - this vagueness is a hinderance, not only to the Tribe desiring to contract trust programs but to BIA staff in their efforts to meet their responsibilities while supporting the spirit and intent of Public Law 93-638." Clarification is the meaning of the "trust responsibility", as I have often said, is desperately needed.

Moreover, a revision is needed to Public Law 93-638, which would extend its applicability to the authority of tribes to receive funding directly from other Federal departments. Could an "umbrella" provision be inserted making Indian tribes, at thier option, eligible to receive direct federal funding (rather than through states) for all programs listed in the catalog of Federal Domestic Assistance for which other units of government are eligible? Could Public Law 93-638 be amended to guarantee to Indian tribal governments the same direct access to federal programs that is enjoyed by units of state and local government? These questions bring me to a final, overall recommendation.

IV. Recommendation

"638", as the "Contracting Act," allows tribes to get money to administer formerly federal programs, but does little to move tribes toward true self-determination. But other provisions of the Act and Regulations allow tribes to "plan, replan, design and redesign" Bureau programs in order to make those programs meet tribal needs and priorities. The Bureau (and the IHS, for that matter) has no mechanism for providing effective assistance to tribes in carrying out such redesigning.

The Navajo Tribe has this year initiated a "program performance budget" process, which ties expenditures of all funds administered by the Tribe to the accomplishment of tribally-developed objectives. We are attempting to extend that process to planning for the use of the $31 million of Bureau programs which the Tribe currently contracts, and several million dollars of IHS programs. And yet, because we are locked into the contracting mode, we are unable to fit these programs well into a broad scheme for meeting tribal goals.

To correct this, changes will be required in the Bureau budget process and in the language of "638". The mechanism through which state and local governments receive federal funding to carry out programs to serve their citizens is that of grants. That grant mechanism allows greater flexibility in the design and conduct of programs, and puts the federal grantmaking agency in much more of an "arm's length" relationship to the local or state governmental entity receiving the funds. If the $31 million that the Navajo Tribe contracts from the BIA this year were to become a single line item in the Bureau's budget for FY 1979, and were to be set aside as an entitlement to the Navajo Tribe, to be awarded as a grant upon submission of a plan for its use, taking into account all the other needs of the Navajo Tribe and the resources available to it, we would, for the first time, be able to use these funds for purposes related to Tribal priorities, rather than continuing to accommodate the self-protective instincts of a federal bureaucracy.

This recommendation, I realize, involves both a radical restructuring of the BIA budget process, and an amendment to "638" which would remove Tribal governments from the restrictive practices inherent in the contracting system. It implies beginning to treat tribes, in other words, in much the same way as other state and local governmental entities are treated by other federal funding agencies. It signifies the recognition that Indian Tribal governments are a permanent element of the American intergovernmental system, and not a temporary aberration. These are big steps, but I urge you to take them, if "638" is truly to be a "self-determination" act for Indian people. Thank you very much.

Mr. **MacDonald**. Thank you very much.

Chairman **Abourezk**. Thank you for some excellent testimony. I want to ask one question of the panel; anybody can answer it, more than one if you want.

Do you think that with some changes, that we ought to retain 638 or abolish it altogether?

Mr. **MacDonald**. I believe that the intent, the reasoning behind 638 is a very good idea. But to use contracting as the centerpiece for implementation of that bill, I believe is wrong.

As I have said before, it is just contracting out those programs which already have straitjacketed the Indian tribal governments to perform inadequate services that was already performed by the BIA, and along with the same rules and regulations that you have to abide by and with the same inadequate funding, it is not going to achieve any more than just to have a headache passed on to the tribal governments themselves. That is why I say if that happens, the tribal governments then become the puppets of Federal bureaucracy.

So I believe that there is a good intention behind it and, if at all possible, perhaps it can be restructured rather than completely eliminated, to make it more flexible and to achieve the goals for which it was intended in the first place.

Chairman **Abourezk**. Anybody else wish to comment on it?

Mr. **Forrest**. I would like to make a comment. I think that the intent is excellent, and I think it raised the aspirations and hopes of the Indian people that they achieve some of their aspirations and their goals.

They haven't been able to do this, and I don't know what needs to be done—maybe restructuring. There is no implementation plan in 93–638 so that there is no way that Indian people can actually go and make the changes.

There is a grave danger in the implementation process as it now exists. It could actually do just the opposite of what Congress intended.

The credibility of tribal governments is at stake. We explained to tribes that these things are going to be made available to us. We promised them and we have been promised and now we can't produce. Indian tribes and tribal governments are in trouble simply because they can't produce. It is not their fault.

I think there is real danger that the credibility of tribal governments is going to collapse rather than strengthen if nothing is done.

Chairman **Abourezk**. Aaron, before you give up the microphone, what do you think of the proposal that 638 be retained but its implementation be put in the hands of an independent agency rather than the Bureau?

Mr. **Forrest**. I think that is an excellent idea. With Public Law 94–437, Indian people are involved in the implementation. I won't go any further than to say that, upstairs in HEW, throughout the implementation they might have substituted their own to present to Congress.

But the process of an implementation plan requires Indian input and Indian participation. We did not have that in 437, except that Indian Health Service does not have the authority to make certain decisions, so the decisions were made upstairs.

But I agree that there has to be a process by which Indian people can actually become involved in developing that implementation plan that Mr. MacDonald was talking about. I think we have that capability as indicated by developing implementation funds for 437.

Chairman **Abourezk.** Thank you.

Mr. **De La Cruz.** Senator, I also concur that the intent of 638 was a good intent and 638 could work. As I understand the intent, it was to get the dollars down to the Indian tribes and Indian people so they could, through their own self-determination, do some of the things they see as Indian people.

If you look into my tribal statment, I illustrated a graph of the 22-or-so steps we had to go through back and forth, and maybe Pete's example. It should be handled through a separate agency. As you review the 638 regulations you find that the Bureau, itself, is built in again to keep its own bureaucracy going.

There was a move by tribes through the years to do away with the area offices. It costs $22 million per area office to get those dollars down to the Indian people, as they developed the regulations for 638, they built all the authorities within the area offices to keep their own existence. You can't channel money to tribes and expect those dollars to get there when you have to go through the 22 steps or so, back and forth in negotiations.

You wear your people out and you wear those dollars out before you ever get a contract.

Chairman **Abourezk.** I just want to announce that written tribal testimony will be accepted for 10 days following this hearing.

Any tribes that want to give any comments on 638, please do so. Send them to the Senate committee in Washington. All of this testimony will be collected in the record, and we will use it to confront the BIA and Indian Health Service with the criticisms.

Mr. **Tonasket.** All right. Mr. Chairman, I, too, concur with the other ones who were reacting to your question about 638.

I would hate to see it be completely done away with. I think that there are a lot of problems with it, as I have pointed out. But I think it would be very difficult to correct those problems as long as those same individuals, or the same personalities, are in those positions within the Bureau of Indian Affairs.

I think that it is worthwhile to point out as a part of the record, and to the audience, and to you, that we haven't gone over our statements or our positions here together. So you can see the unanimous feeling that we have about Public Law 93-638, about the Bureau of Indian Affairs, and about specific problems within the administrative structure. So I think it is very significant the things that you are hearing. It is not preplanned.

Mr. **Trimble.** Senator Abourezk, I would have to say for the Oglala Tribe that Public Law 93-638 has brought many facets of self-determination to the reservation. I think you are aware that tribal takeover of law and order on the Pine Ridge Reservation has definitely stabilized the social climate there. The takeover of one of our schools, the pending takeover of another one are bringing a lot of hopeful promise to young Indian leadership on the reservation.

I totally agree that the implementation through the regulations prepared by the Bureau of Indian Affairs has to bear the whole brunt of the fault as to the problems that exist.

My last job with the Bureau of Indian Affairs was to work with a regulation-building team there. I went around it. [Laughter.]

In some cases, I watched the Bureau of Indian Affairs team stand up before these meetings that were held in all parts of the country and have staff members question whether parts of the act were legal because of their discussions with the Solicitor. For example, they questioned the legality of the law made by our Congress.

So this is the type of input that was largely brought into the making of these regulations that helped us implement these things.

Incidentally, after years and years of employment assistance and superintendency and everything, I became an expert in public school construction. That was the job given me on that team. So I just want to point out as to how this was put together. But with all its faults and problems, it is still the basis of building a new day in Indian life.

Mr. **Taylor.** Mr. Chairman, I would like to say again that our tribe has gone on record with a resolution as being opposed to Public Law 93-638. Especially the way it is being administered now.

I attended the hearings when they were talking about rules and regulations of Public Law 93-638. They are not being carried out.

They said a tribe could come under Public Law 93-638 if they wanted to or they could still go with the Buy Indian Act. They are not telling us any longer, "I think that Public Law 93-638 is just going to show the tribe that they are not capable of running their own affairs," and this has been proved.

I asked them a question at one of the hearings when they were setting up this thing. They always talk about 4 years, you know; "4 years down the road, it is going 4 years."

I asked the question, "What happens after 4 years?" They said, "We will cross that bridge when we get to it."

And you can't cross the damned bridge if it isn't there, Mr. Chairman. [Laughter.]

And that is what I keep telling these people. It is just one way the bureaucrats in Washington and all over can show the Indians that they are failures. By gosh, I don't believe we are failures, Mr. Chairman. We can do something if we want to.

Thank you again, Mr. Chairman.

Chairman **Abourezk.** Thank you. [Applause.]

Mr. **Tonasket.** I would like just one more comment and then I will keep quiet—as long as the river is running, and the grass grows, and all of that.

Jonathan Ed just reminded me of a discussion that I had with Sherwin Broadhead—whom you know and many of the people here in the audience know, who used to work with ex-Commissioner Louis Bruce, and he worked on your committee.

When I was preparing to come down here for these hearings, he said, "Do you know, a few years ago, when I worked with the Bureau, there was one of the individuals," and he named the individual who sat in a high echelon in the BIA. He said, "Before this contracting ever came out," he said, "you know what we ought to do?" He said, "just drop this on them and watch them die. Let them prove that they can't operate these contracts," and I think that Jonathan Ed has some very good points and I think some of the attitudes is what caused these problems.

Mr. **De La Cruz.** Mr. Chairman, I would like to make one final comment on that. I think what some of us have proved is that the Indian people are capable. It is our trustee, all the way up through the echelons, that has many incompetent people that can't learn and follow the regulations that they have designed themselves. They have created a confusion that they can't understand.

Before I close, I would like to enter for the record a telegram from Buffalo Tiger, the chairman of the Miccosukee Tribe, and a statement from the Tule River tribal chairman, Alec Garfield, for the record.

I want to thank you for hearing this panel. I hope that all the tribes that sat in the audience and heard this testimony, will file their reports and testimony regarding the problems that Indian people are having with 638.

I thank you.

Chairman **Abourezk.** Thank you, Joe. Those will be accepted for the record.

[The prepared statements of Buffalo Tiger of the Miccosukee Tribe of Indians of Florida and Alec Garfield, chairman of the Tule River Tribal Council, Porterville, Calif., follow:]

Telegram

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ICS IPMMTZZ CSP

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PMS BUFFALO TIGER, RDM REPORT, DELIVERY BY MAILGRAM, DELIVER IMMEDIATELY, DLR

AIRPORT MARINA HOTEL

ALBUQUERQUE NM

TESTIMONY TO SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ALBUQUERQUE NEW MEXICO JUNE 24 1977.

THIS IS THE TESTIMONY OF THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA OUR TRIBE ENDORSES DESIGN AND PROCEDURES OF PL93-638 AND URGES CONGRESS,TO MAINTAIN FAITH WITH INDIAN PEOPLES BY NOT ALLOWING THE PROMISES CONTAINED IN THE LAW TO BE UNDERMINDED BY LACK OF FUNDS OR ADMINISTRATIVE CHANGES OF PROCEDURES BY BIA OR IHS. TRIBES WANT THE "COSTS OF CONTRACTING" TO BE APPROPRIATED AT NECESSARY LEVELS, AS WELL AS THE GRANT AND T AND TA PROGRAM. OUR TRIBE ASKS CONGRESS NOT

TO ALLOW IHS AND BIA ADMINISTRATIVELY TO SABOTAGE 93-638, FOR INSTANCE BY NOT FOLLOWING FULL DECLINATION PROCEEDINGS WHEN A TRIBE APPLIES FOR A CONTRACT IN AN AMOUNT EXCEEDING ITS ALLOTMENT. WE

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FEEL SELF DETERMINATION REQUIRES TRIBAL INPUT IN CONSIDERATION OF NEEDS WHEN BUDGET REQUESTS ARE BEING DEVELOPED. ALSO, BIA AND IHS SHOULD BE REQUIRED TO PROVIDE REAL TA TO TRIBES AND NOT JUST ADD PERSONNEL TO ITS OWN STAFF, OR PROVIDE SALARY INCREASES TO ITS OWN STAFF FROM 638 FUNDS, WHICH CONTRACTING, TRIBES MUST PERFORM IN UNFAMILIAR AREAS; BIA AND IHS SHOULD TRAIN AND ASSIST TO KEEP TRIBES OUT OF TROUBLE AND NOT JUST ACT IN ADVERSARY ROLES. FINALLY OUR TRIBE ASKS CONGRESS TO HAVE THE REGULATIONS CHANGED TO REFLECT THE SITUATION OF TRIBES ALREADY CONTRACTING, RATHER THAN ONLY THAT OF TRIBES WHICH ARE JUST DEVELOPING THE CAPACITY OR ARE CONTRACTING FOR THE FIRST TIME

CY MAUS GRANT AND CONTRACTS OFFICER MICCOSUKEE TRIBE OF FLORIDA
(PO BOX 440021 TAMIAMI STATION MIAMI FL 33144)

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The Honorable James Abourezk
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Abourezk:

The Tule River Tribe wishes to submit written testimony to the Select Committee on Indian Affairs regarding the Indian Self-Determination and Education Assistance Act (P.L. 93-638)

Based upon our understanding of the Act and the opinions of the staff of our BIA agency and area offices, we recognize that our Tribe cannot contract for services currently provided by the BIA. This stems from the fact the Central California Agency contains 34 tribes and contracting a program area with any one tribe would jeopardize the services available to the other tribes. We will limit our comments to the grant and technical assistance portions of the act.

Organization/Administration
BIA

We believe the agency office should be given more authority and responsibility over funding. We currently submit requests to the agency which seems to know nothing about the act. The requests are sent to the area office for approval by a coordinator. There seems to be a log jam at this point where the requests of 81 tribes have to move across a single desk.

As an example, we requested technical assistance funding in November, 1976 which was approved verbally on June 8, 1977. Significant changes and savings of Tribe resources could have occurred the first five months this calender year had the technical assistance been available. We also question the use of $ 68,000 of the $313.000 technical assistance allocation for the Sacramento area to pay BIA staff salaries.

A complete Indian Health Service office is needed in Sacramento, instead of a branch office which reports to the Phoenix IHS office. Authority and responsibility would be more accessable should this office become a area program office with grant approval authority.

Funding Allocation

The Band Analysis is a waste of time and effort in a multi-tribe agency. Zero based budgeting is needed for the fiscal year 1978 budget if the needs of the tribes are to be met. We disagree with the inclusion of grant funds from the act in the Band Analysis. This means allocations are based on a formula where they should be based on individual tribal needs.

We recommend all BIA agency funds be budgeted in the following manner and will use the Central California Agency as an example. The agency has an advisory committee comprised of 7 of the 34 tribal chairman. The objectives of each department within the agency should be documented by BIA staff and submitted to the advisory committee for approval. Upon approval of the objectives, the BIA staff could draft a budget designed to accomplish the objectives.

The needs of each tribe in the agency would also be documented and submitted to the advisory committee. The committee would then review the stated tribal needs and ask the BIA for a plan of how the agency will help meet the needs. It is important to the success of this approach that BIA regulations contain firm requirements for advisory committee approval of the agency objectives, budget and plan for meeting tribal needs. The current advisory committees does not have the power to effect change, nor does any one tribal chairman have a complete understanding of BIA funding.

Federal Domestic Assistance

The Federal Regional Council in Region IX was formed to bring about coordination of the efforts of federal agencies and to provide a forum for discussing and solving the problems of recepient organizations. This has not happened. We have been told the failure is due to a lack of funding for staff on the Federal Regional Council. This seems logical and yet ironic that a group formed to help us with funding problems cannot get funded itself. We also wonder about the sincerity of some of the participating agencies.

I would like to emphasize one last comment before my conclusion and that is for this Select Committee to really take a hard look at California and their unique problems.

We appreciate this opportunity to present our views. It is our hope that the Select Committee will find this testimony useful in your research.

Sincerley,

Alec Garfield

Alec Garfield, Chairman
Tule River Tribal Council

Chairman **Abourezk**. The staff counsel has indicated that he has some questions he would like to ask. So I will turn it over to him right now for questions.

Mr. **Parker**. The discussion that the panel went into concerning the proposal to create some sort of office outside of the BIA to administer 638 as an alternative way of correcting some of the problems that you have encountered in terms of multisteps in contracting and in terms of having too little choice in terms of the programs that you can contract for: Staff has been considering proposals along the line of revenue-sharing grants or bloc grants as an alternative to a contract system.

Now, if you wouldn't care to comment on that at this point exactly, but if you would supplement your testimony on that issue, or if the organizations would want to do some quick research or to respond and to point out to us your views on that proposed alternative; that is, instead of a contract, a revenue-sharing formula or a bloc grant system that some of the other Federal programs use.

Mr. **De La Cruz**. Alan, I think that that would be a good area to really consider—the revenue sharing type of concept that would be getting those dollars immediately directly to the tribe in that area that you are contracting in.

I would ask all the panel to consider that and to submit their views on it and, also, the tribes that are sitting in the audience. I know that at least from the area that I come from, that it would be impossible to train all the layers of bureaucrats that you have to train to make this act work.

They don't have one contracting officer in the Portland area office; neither do we in the agency. So we would go through many years of trying to train people, so I think your suggestion is one well worth considering.

Mr. **Parker**. One final question—and this is for the benefit of the audience also, and the tribes who may be considering submitting testimony to us—at the hearing when we heard from the BIA and IHS and in response to interrogatories we had sent them, it seems like a practice that has been engaged in, in the past, is to take moneys from the contract budget and to meet BIA personnel displacement cost and other BIA costs associated with the contracts.

So, in effect, what you have at the tribal level is the choice of entering into a contract and then you would, in effect, be penalized for the cost of the contract.

Now, any examples that you can give us or if you want to respond to that directly at this time, we think that is a significant point to which we would like to see testimony addressed.

Mr. **De La Cruz**. Alan, from my own experience, I found that paying severance pay would really create a burden on the tribe if we are going to contract something such as road and maintenance or something similar. That is what they tell us; that we have to pay severance pay if we are going to displace those people. It doesn't leave enough dollars to even consider a contract. I think that is something that should be really looked into—where people can't be moved into some other agencies.

I find in reviewing the Bureau personnel policies and job descriptions that they probably have to go into another agency at a much lower level than what they are hired into at the Bureau. That is one thing—you don't get very many transfers into other Federal agencies.

Mr. **Parker.** Unless the panel has anything else for us, we thank you for your——

Mr. **De La Cruz.** I would like to leave a final comment on the revenue-sharing issue. If you are really considering that, if you write in the language in there that you stress in no way does this delineate the treaty obligations of the United States—going into this type of a move to go the revenue-sharing direction—and the tribes are protected. That their treaties and obligations of the United States and Congress hold.

That is one of the things or fears that many of the tribes face—the thought of being taken out of the Bureau.

Mr. **Parker.** Right. That is a good point.

Mr. **Forrest.** I think one very important issue that has to be addressed by the committee is the interpretations of the Bureau of Indian Affairs as they take over the internalizations of the regulations of the Indian Health Service. I think this can be very, very damaging.

For example, it is possible for a tribe to get a grant through the Bureau of Indian Affairs and impossible to get a grant through the Indian Health Service, I think this issue has to be addressed early in hearings regarding the oversight on the regulations.

We testified that there was no reason in the world why these regulations couldn't be similar so the interpretations would be similar. This is a big hangup with the tribes.

Mr. **Parker.** Thank you.

Mr. **MacDonald.** As you know, I said a lot of things about the Federal bureaucrats and it seems like maybe it just concerned itself with BIA. I didn't say anything about Indian Health Services, although it is detailed in my statement. I just want to say that: Whatever I said about BIA, just multiply it by 10 of IHS. [Laughter and applause.]

Mr. **Parker.** We will be sure that the committee gets that message.

Mr. **De La Cruz.** Alan, it is my understanding that you have a list of other witnesses that you can take.

Mr. **Parker.** Right. We have some other witnesses that we need to hear from before we conclude the hearing.

Mr. **De La Cruz.** We will leave the table and you can talk with those witnesses.

Mr. **Parker.** All right. Thank you.

If we can have Mr. Newton Lamar from the Wichita Tribe, Frank Tenorio and Paul Bernal of the All Indian Pueblo Council, and from the Alaskan area: Chris McNeil for the Tlingit-Haida Central Council, Al Ketzler, Tanana Chief's Confederation, and Charles Johnson, Executive Director for Bering Strait.

Chairman Abourezk reminded everybody and I would like to remind you again that if you advise your governing body, they can still submit testimony within 10 working days and it will be printed as a part of the record and published as if you were testifying here. If this law is amended, it will be from your recommendations.

Chairman ABOUREZK. The next panel of witnesses I will ask Frank Tenorio to introduce.

Mr. TENORIO. Thank you, Senator Abourezk, and it's always a pleasure to appear before your committee to testify. At this point, I would like to yield this microphone to Mr. Paul Bernal, vice chairman of the All-Indian Pueblo Council. Our presentation from the All-Indian Pueblo Council is in two parts. He will allude to the concerns that are with the Bureau of Indian Affairs and I will then take off on Indian Health Service.

Chairman ABOUREZK. I would like to ask the audience to please come to order so we can hear the witnesses. Would you be courteous to the witnesses and allow them to testify without all the background noise. Thank you.

STATEMENT OF PAUL BERNAL, VICE CHAIRMAN, ALL INDIAN PUEBLO COUNCIL

Mr. BERNAL. Mr. Chairman, my name is Paul Bernal, vice chairman, All-Indian Pueblo Council.

Mr. Chairman, thank you for giving us this opportunity to come before the Select Committee on Indian Affairs to present testimony.

In the interest of saving the committee's time I would like to present my prepared statement for the record instead of reading it.

Chairman ABOUREZK. Thank you very much. Your prepared statement will be made a part of the record as though read.

[The prepared statement of Paul Bernal follows:]

ALL INDIAN PUEBLO COUNCIL

Office of the Chairman

1015 Indian School Road, N.W. P.O. Box 6507 Albuquerque, New Mexico 87107 Phone: (505) 247-0486

STATEMENT OF

MR. PAUL BERNAL, VICE CHAIRMAN
REPRESENTING THE ALL INDIAN PUEBLO COUNCIL
ACCOMPANIED BY
MR. FRANK TENORIO, SECRETARY-TREASURER

MR. CHAIRMAN, THANK YOU FOR GIVING US THIS OPPORTUNITY TO COME BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS TO PRESENT TESTIMONY ON THE STATUS OF PUBLIC LAW 93-638, AS IT PERTAINS TO THE 19 PUEBLOS. REALIZING TIME LIMITATIONS, WE ARE SUMMARIZING OUR PRESENTATION; HOWEVER, WE ASK THAT OUR WRITTEN STATEMENT BE INCLUDED IN THE RECORD.

MR. CHAIRMAN, THE 19 PUEBLO GOVERNORS WHOLE-HEARTEDLY SUPPORT AND ADVOCATE THE PURPOSE AND INTENT OF PL 93-638, THE INDIAN SELF-DETERMINATION AND EDUCATIONAL ASSISTANCE ACT. HOWEVER, WE HAVE CONSTANTLY REMINDED THE CONGRESS, THE DEPARTMENT OF INTERIOR, THE BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE THAT THERE WOULD BE SERIOUS PROBLEMS AND LIMITATIONS ON THE IMPLEMENTATION AND UTILIZATION OF PL 93-638, AMONGST THE 19 PUEBLOS. LET ME TRY TO BRIEFLY OUTLINE OUR PRIMARY CONCERN WITHIN THE BUREAU OF INDIAN AFFAIRS, THEN THE INDIAN HEALTH SERVICE.

FIRST, 18 OF THE 19 PUEBLOS RECEIVE PRACTICALLY ALL BUREAU OF INDIAN AFFAIRS SERVICES AND FUNDING THROUGH TWO (2) AGENCIES: THE NORTHERN PUEBLOS AGENCY WHICH SERVES EIGHT (8) PUEBLOS AND

AND THE SOUTHERN PUEBLOS AGENCY WHICH SERVES TEN (10) PUEBLOS. THESE TWO MULTI-TRIBAL AGENCIES HAVE CONTINUALLY BEEN UNDERFUNDED AND UNDERSTAFFED. MANY PROGRAMS SUCH AS HOUSING, CREDIT, TRIBAL OPERATIONS, REALTY AND OTHERS ARE PROVIDED AT THE AGENCY LEVEL BY ONE OR TWO INDIVIDUALS. IT, THEREFORE, MEANS THAT FOR ANY OF THE PUEBLOS WITHIN THE TWO MULTI-TRIBAL AGENCIES TO CONTRACT ANY ONE OF THESE PROGRAMS, WOULD MEAN TO DENY THESE SERVICES TO THE OTHER PUEBLOS. NEEDLESS TO SAY, THE SAME IS TRUE REGARDING PERSONNEL AND THE EFFECTS OF UTILIZING THE "INTERGOVERNMENTAL PERSONNEL TRANSFER ACT" (IPTA). SINCE THE BUREAU'S BUDGET PROCESS IS DESIGNED TO ALLOCATE FUNDS AND OTHER RESOURCES ON AN AGENCY-BY-AGENCY BASIS, RATHER THAN ON A TRIBE-BY-TRIBE BASIS, WE CANNOT FORESEE ANY MEANINGFUL RESOLUTIONS TO OUR DILEMMA. IN SUMMARY, FULL UTILIZATION OF PL 93-638 AND/OR CONTRACTING OF BUREAU PROGRAMS IN MULTI-TRIBAL AGENCIES IS NEXT TO IMPOSSIBLE.

SECONDLY, IT IS THE GENERAL FEELING AMONGST THE 19 PUEBLOS THAT THE BUREAU'S RESPONSIBILITY TO EXPEDIOUSLY IMPLEMENT PL 93-638 HAS NOT BEEN MET. IN MOST CASES THAN NOT, BECAUSE OF INADEQUATE STAFFING AT THE ALBUQUERQUE AREA LEVEL, TRIBAL CONTRACTS MUST BE DELAYED 30 TO 60 DAYS BEYOND THEIR DEADLINES. IN MOST CASES THAN NOT, PERSONNEL AT THE AREA LEVEL ARE NOT THOROUGHLY AND EXPERTLY KNOWLEDGEABLE ABOUT ALL PROVISIONS AND REGULATIONS GOVERNING PL 93-638 CONTRACTS. THERE IS ALSO APPARENT CONFLICT, MISUNDERSTANDING, MISINFORMATION AND MISCOMMUNICATION BETWEEN THE PL 93-638 STAFF AND THE REGULAR CONTRACTING STAFF REGARDING REGULATIONS AND PROVISIONS OF PL 93-638. WE STRONGLY RECOMMEND THAT INSTEAD OF CREATING NEW DEPARTMENTS WITHIN THE AREA OFFICE, FOR

IMPLEMENTATION OF PL 93-638, THESE EXISTING CONTRACTING PERSONNEL SHOULD BE INCREASED.

IN ADDITION, PL 93-638 IS, TO OUR UNDERSTANDING, DESIGNED TO GIVE MAXIMUM PARTICIPATION AND DECISION-MAKING AUTHORITY AT THE LOCAL LEVEL. WHY THEN ARE ALL CONTRACT AUTHORITY, ALL FUNDING ALLOCATIONS AND ALL CONTRACT MONITORING AT THE AREA LEVELS WHEN IN FACT THESE SERVICES SHOULD BE AT THE LOCAL AGENCY LEVEL? IT SEEMS TO US THAT THE BUREAU IS DEVELOPING THE REGULATIONS FOR THE IMPLEMENTATION OF PL 93-638, AND CENTERED ALL 638 DECISION-MAKING AT THE AREA AS A MEANS OF PERPETUATING AND INSURING THE EXISTENCE OF AREA OFFICES.

THERE IS AN EFFORT TO STANDARDIZE PL 93-638 CONTRACTS IN A MANNER WHICH WOULD PROVIDE FOR A STANDARD SCOPE OF WORK FOR ALL 638 CONTRACTS, NO MATTER WHO OR WHAT THE TRIBE IS. WE STRONGLY FEEL THAT EACH AND EVERY TRIBE IS DIFFERENT AND THAT THESE DIFFERENCES SHOULD ALSO BE REFLECTED IN THE SCOPE OF WORK AND THE CONTRACT ITSELF.

MR. CHAIRMAN, THERE IS, AT PRESENT, 48 PL 93-638 CONTRACTS THAT ARE APPROVED AND NEGOTIATED THROUGH THE ALBUQUERQUE AREA OFFICE. THERE ARE 23 CONTRACTS UNDER SECTION 104, WHICH BASICALLY MEANS THAT THERE IS ONE SECTION 104 GRANT TO EACH OF THE TRIBES SERVED BY THE ALBUQUERQUE AREA OFFICE. OF A TOTAL TRAINING AND TECHNICAL ASSISTANCE ALLOCATION OF $243,000, THE ALBUQUERQUE AREA WILL RETAIN $93,000. $72,000 OF THAT WILL BE FOR PL 93-638 STAFF; $21,000 WILL BE A CONTINGENCY WITH FOUR (4) DECLINATION ISSUES. A TOTAL OF $171,000 WILL BE AVAILABLE FOR THE TRIBES. (See Exhibit "A")

"EXHIBIT A"

IN REPLY REFER TO:
Tribal Operations

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ALBUQUERQUE AREA OFFICE
P.O. BOX 8327
ALBUQUERQUE, NEW MEXICO 87108

JUN 21 1977

All Indian Pueblo Council, Inc.
P. O. Box 6507
1015 Indian School Road, N. W.
Albuquerque, New Mexico 87107
Attention: Mr. Frank Tenorio

Dear Mr. Tenorio:

The following is in response to information requested of my office by AIPC in preparation for P. L. 93-638 Oversight Hearings. If I may be of further assistance, please let me know.

1. How many 638 Contracts (currently in effect) in the Albuquerque Area? Forty-eight (48) P. L. 93-638 Contracts that were approved and negotiated by the Albuquerque Area Office are currently in effect.

2. How many grants have been made under Section 104 of P. L. 93-638? Twenty-three formula share P. L. 93-638 grants have been made. This is one to each Tribe served by the Area Office.

3. How many T/TA contracts?

Funds	Contractor	Purpose
1) $45,100 (FY 76)	AIPC	Provide P. L. 93-638 Training
2) $95,000 (FY 77: (pending) $30,000 from PHS)	AIPC	Provide assistance in establishing Financial Management Systems

4. Amount of P. L. 93-638 funding allocated to Area. See attachments.

5. How much of this retained by Area Office for administration? $72,000 Staff expenses (at Central Office direction) $21,000 for specific declination issues and pre-contract technical assistance.

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Attachment #4

AREA TRAINING AND TECHNICAL ASSISTANCE FUNDING

	SELF-DETERMINATION 1/ STAFF EXPENSES	TRAINING & TECHNICAL 2/ ASSISTANCE GRANTS & CONTRACT SERVICES	TOTAL TRAINING AND TECHNICAL ASSISTAN
ABERDEEN	$ 70,000	$ 171,000	$ 241,000
ANADARKO	75,000	171,000	246,000
BILLINGS	72,000	148,000	220,000
MINNEAPOLIS	100,000	171,000	271,000
PHOENIX	45,000	220,000	265,000
ALBUQUERQUE	72,000	171,000	243,000
SACRAMENTO	68,000	244,000	312,000
EASTERN	76,000	171,000	247,000
NAVAJO	50,000	122,000	172,000
PORTLAND	60,000	196,000	256,000
JUNEAU	101,000	244.000	325,000
MUSKOGEE	75,000	171,000	246,000
CENTRAL OFFICE	158,000	367,000	525,000
RESERVE	---	828,000	828,000
	1,022,000	3,395,000	$4,417,000

1/ Based on Area Office responses to Commissioner's Memo of Sept. 7, 1976.

2/ Amounts allocated to Areas vary according to number of tribes to be served by Area. Actual amounts vary from $127,000 to $244,000 as follows:

Tribes	Funding
Single	$ 122,000
2 --10	148,000
11--30	171,000
30--35	196,000
36--75	220,000
Over 75	244,000

SELF-DETERMINATION FY 1977 PROGRAM FUNDING ALLOCATIONS

LOCATION	REVISED FORMULA SHARES 1/	SMALL TRIBE INCENTIVES	PHASED TGDP COMMITMENTS	TOTAL GRANTS	TRAINING AND TECHNICAL ASSISTANCE	PROGRAM TOTAL
ABERDEEN	$ 1,715,713	$ 5,185	$ 9,952	$ 1,730,850	$ 241,000	$ 1,971,850
ANADARKO	730,860	57,874	23,764	812,498	246,000	1,058,498
BILLINGS	1,056,853	---	---	1,056,853	220,000	1,276,853
NNEAPOLIS	1,068,212	67,322	82,815	1,218,349	271,000	1,489,349
PHOENIX	1,763,573	129,184	27,664	1,920,421	265,000	2,185,421
ALBUQUERQUE	1,319,489	31,977	---	1,351,466	243,000	1,594,466
SACRAMENTO	326,708	546,713	3,252	876,673	312,000	1,188,673
EASTERN	753,748	21,750	12,073	787,571	247,000	1,034,571
NAVAJO	593,000	---	---	593,000	172,000	764,700
PORTLAND	1,094,695	94,020	33,671	1,222,386	256,000	1,478,386
JUNEAU	2,190,091	1,349,059	---	3,539,150	345,000	3,884,150
SKOGEE	1,299,170	24,857	---	1,324,027	246,000	1,570,027
CENTRAL OFFICE	---	---	---	---	525,000	525,000
RESERVE	66,756	---	---	66,756	828,000	895,056
TOTAL	13,978,868	2,327,941	193,191	$16,500,000	$4,417,000	$20,917,000

/ Formula Shares reflects population adjustments through December 31, 1976

6. How many P. L. 93-638 Contract applications did the Area Office receive? Forty-eight (48) were received and completed.

7. How many were declined? None.

8. Amount of funds allocated to Area for pre-contract technical assistance? $21,000 has been retained at the Area level for the purpose of providing pre-contract technical assistance and meeting the problems accompanying specific declination issues.

9. Were tribes informed of T/TA and 638 funds and how? The Tribes received letters signed by the Area Director informing them of the allocation of the 93-638 formula share grants.

   $150,000 has been divided among the Agencies to be used for T/TA services to the Tribes served by those Agencies. Notice on availability of these funds is being handled by the Agency Superintendents.

10. Are any non-Indian groups/organizations involved in 93-638 contracting or grants? Sterling Institute conducted two training sessions here in November, 1976.

Celestino J. Pagayo
For P. L. 93-638 Coordinator

Attachment(s)

A. How many P.L. 93-638 contracts do we have in the Albuquerque Area?	
1) How many Section 104 contracts?	Section 104 - 12 contracts Section 103 - 1 contract (Tribal Affairs)
2) How much Training and T/A	T/A monies - $106,000
B. How much funds were allocated to the Albuquerque Area? By Title, Section, or Program?	Total Funds allocated to the Albuquerque Area - $900,000 - Section 104 - $700,000 (see attached) - T/A - $106,000 - $42,000 - Tribal training to include Consultants - $ 6,000 - EMS Training - $25,000 - Temporary positions - $33,000 - Balance T/A - Area Administration - $94,000 ~~(see attachment for proposals funded~~).
C. How much of these funds were retained by the Area Office for IHS or BIA Administration?	IHS Staffing - $94,000 (4 positions)
D. How many Applications for P.L. 93-638 contracts have been made by Tribes? How many have been declined and why?	Applications - 26 (15 applications received by the Area due date - March 15, 1977). No declinations, awaiting additional funds, required supplementary $500,000.
E. How much was allocated to the Area Office for pre-contract T/A?	Pre-Contracts - 0
F. Were tribes informed of T/A and Grant Funds? How were they informed? Were they involved in how these funds were allocated or spent?	Tribes informed - Yes, thru 25 workshops and 3 letters to each tribes leaders.
G. Are there any contracted non-Indian firms doing T/A in the Albuquerque Area? If so, who and how much is involved?	Outside contracts - Yes, $42,000 [illegible]; Management Concepts Firm for $23,800, balance of $18,200 will be used for travel for the tribal people attending workshops. 2-3 day Cost Reimbursement Contract Workshops 2-3 day P.L. 93-638 Orientation $94,000 (4 positions plus support costs) $25,000 (3 positions temporary)-IHS General Funds

		TOTAL
1.	Ramah Navajo School Board Health Planning for Continuing of IHS Health Center	$103,521
2.	Jicarilla Apache Tribe Feasibility Study for Contracting IHS Public Health Service	$ 63,356
3.	Albuquerque Area IHS Advisory Board Health Management Development	$ 55,660
4.	Eight Northern Pueblos Agency Health Planning	$ 36,854
5.	Pueblo of Acoma Acoma Tribal Council Health Management Structure Development	$ 47,053
6.	Pueblo of Zuni - Zuni Tribal Council Tribal Health Services Consolidation	$ 87,756
7.	Pueblo of Laguna Development of Health System and Evaluation Study	$ 94,079
8.	Canoncito Navajo Chapter Accounting System Development	$ 49,388
9.	Eight Northern Indian Pueblo Agency Health Board	$ 10,049
10.	Pueblo of Santa Clara Health Service Planning	$ 46,722.42
11.	Alamo Navajo Chapter Health Board Health Management System	$ 47,707.35
12.	Taos Pueblo Tribal Council Health Planning	$ 36,621

RECEIVED
6/23

ALL INDIAN PUEBLO COUNCIL, INC.
New Mexico Intertribal Health Authority
1015 Indian School Road, N.W. P.O. Box 6807 Albuquerque, New Mexico 87107 (505) 843-6801

TO: Delfin J. Lovato
Chairman

DATE: June 23, 1977

FROM: NMIHA Staff

SUBJECT: P.L. 93-638 information requested for Oversight Hearings

The enclosed information requested of Mr. Toya is summarized per attached. (For IHS only)

PROBLEMS AND/OR ISSUES
EFFECTED BY P.L. 93-638 (IHS)

The All Indian Pueblo Council has recognized several problem areas which have encumbered the implementation of this law. Also, further identified issues which should be presented at this time:

Guidelines developed to implement the law presented problems of consistancy in the area of Tribal Clearances - Initial Contracts. Tribes and tribal organizations were required to submit resolutions depending on their individual constitution or bylaws. This presented problems to organizations without clearly defined powers of authority.

Grants, as defined, did not allow any advantage over a contract. Tribes or tribal organizations with prior experience in contract administration should have been allowed more flexibility in program operations through a more flexible grant mechanism.

The definition of grant projects limited the scope of funding under this law. Again, tribes or tribal organizations with prior experience and high level of performance should have been afforded the opportunity to implement additional service programs rather than be limited by the 5 categories (feasibility, planning, evaluation, training, management). Tribes were more concerned with implementing programs (i.e. Emergency Medical Services) rather than planning for them, (most of the time, this had already been accomplished).

Several issues regarding contract negotiations have been stated as:

1) Tribal Contractors were required to come into the Area Office for negotiation.

2) Tribal Contractors were not fully aware that an authorized individual should be involved in these negotiations.

3) The time frame for negotiations was too short. This caused delay, since preparation required in-depth knowledge of budget and support required, additional information for assurances, indirect cost rates, etc.

There was some question on how the priorities of proposals submitted were established, specifically, in regards to who prioritized the proposals. The criteria established by the IHS Area Review Committee was approved by the Area Board (non-Pueblo) and the NMIHA.

June 21, 1977

P.L. 93-638 ALLOCATIONS - IHS

A. P.L. 93-638 contracts in the Albuquerque Area.	
1) Section 104 contracts?	1) Section 104 - 12 contracts Section 103 - 1 contract (Tribal Affairs)
2) Training and T/A	2) T/A monies - $106,000
B. Funds allocated to the Albuquerque Area by Title, Section or Program.	Total funds allocated - Area - $900,000 1) Section 104 - $700,000 (See attachment) 2) T/A - $106,000 - $42,000 - Tribal training to include Consultants - $ 6,000 - EMS Training - $25,000 - 3 Temporary positions - $33,000 - Balance T/A 3) Area Administration - $94,000
C. Funds retained by the Area Office for IHS Administration.	IHS Staffing - $94,000 (4 positions)
D. How many applications for P.L. 93-638 contracts have been made by Tribes? How many have been declined and why?	Applications - 26 (15 applications received by the Area due date - March 15, 1977). No declinations, awaiting additional funds. Required supplementary funding - $500,000.
E. Amount allocated to the Area Office for pre-contract T/A.	Pre-Contracts - $0
F. Were tribes informed of T/A and Grant Funds? How were they informed? Were they involved in how these funds were allocated or spent?	Tribes informed thru 25 workshops and 3 letters sent to each tribal leader and health staff.
G. Contracted non-Indian firms doing T/A in Albuquerque Area.	Outside contracts - $23,800 to MANAGEMENT CONCEPTS for: 2-3 day Cost Reimbursement Contract Workshops 2-3 day P.L. 93-638 Orientation Balance of $18,200 will be used for travel for the tribal people attending workshops.

		TOTAL
1.	Ramah Navajo School Board Health Planning for Continuing of IHS Health Center	$103,521
2.	Jicarilla Apache Tribe Feasibility Study for Contracting IHS Public Health Service	$ 63,356
3.	Albuquerque Area IHS Advisory Board Health Management Development	$ 55,660
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5.	Pueblo of Acoma Acoma Tribal Council Health Management Structure Development	$ 47,053
6.	Pueblo of Zuni Zuni Tribal Council Tribal Health Services Consolidation	$ 87,756
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10.	Pueblo of Santa Clara Health Service Planning	$ 46,722.42
11.	Alamo Navajo Chapter Health Board Health Management System	$ 47,707.35
12.	Taos Pueblo Tribal Council Health Planning	$ 36,621

Mr. BERNAL. Thank you, Mr. Chairman.

Chairman ABOUREZK. Thank you very much.

STATEMENT OF FRANK TENORIO, SECRETARY-TREASURER, ALL INDIAN PUEBLO COUNCIL

Mr. TENORIO. That part of the presentation by Mr. Bernal, had to do with the Albuquerque area office.

And now, I will proceed on to the problems and issues affected by Public Law 93–638 as it pertains to the Indian Health Service.

For the record, I am Frank Tenorio from the Pueblo of San Felipe and presently the secretary-treasurer of the All Indian Pueblo Council.

The All Indian Pueblo has recognized several problem areas which have encumbered the implementation of this law, and also further identified issues which should be presented at this time.

One: The guidelines developed to implement the law present problems of consistency in the area of tribal clearance in the initial contracts.

Tribes and tribal organizations were required to submit resolutions depending on their individual constitution or bylaws. This presented problems to organizations without clearly defined powers of authority.

Two: Grants as defined did not allow any advantage over a contract. Tribes or tribal organizations with prior experience in contract administration should have been allowed more flexibility in program operations instead of more flexibility in grant mechanisms.

Three: The definition of grant projects limited the scope of funding under this law. Again, tribes and tribal organizations with prior experience and high level of performance should have been afforded the opportunity to implement additional service programs, rather than be limited by the five categories.

Those are feasibility, planning, evaluation, training and management.

Tribes were more concerned with implementing programs as emergency medical services, rather than planning for them. Most of the time, this has already been accomplished.

Several issues regarding contract negotiations have been stated as:

One: Tribal contractors were required to come into the area office for negotiations.

Two: Tribal contractors were not fully aware that an authorized individual should be involved in these negotiations.

Three: The time frame for negotiations were too short. This caused delays since preparations required indepth knowledge of budget and support required.

Additional information for assurances, indirect cost rates and so forth.

There are some questions on how the priorities of proposals submitted were established; specifically in regards to who prioritized the proposals. The criteria established by the Indian Health Service Area Review Committee was approved by the Area Board Non-Pueblo and New Mexico Indian Health Authority. And we have attachments to both. Both of the presentations deal in statistics as far as our area is concerned. Certainly we have a list of concerns that we, more or less, put to this committee as questions and we attempted to answer those particular concerns, so that is the limit of our presentation and we thank you very much for that.

Chairman ABOUREZK. Thank you. We will put all that into the record. Thanks very much.

STATEMENT OF NEWTON LAMAR, WICHITA TRIBE

Mr. LAMAR. Thank you Senator Abourezk for allowing me to testify before this committee hearing. I would like to state first that after hearing the previous panel, our tribe is going to consider and I am sure most of the others would endorse all of the recommendations made by the previous panel. Those are problems that exist probably throughout the country.

I would like to gear my oral testimony a little bit to some of the new wrinkles that are being used by the Bureau in blocking contracting by tribes when they so desire to do so.

One of the things that happened to me, personally, was I tried to contract for a cardiographic section located in El Reno, Okla. The office there was staffed by two people. I think it cost the Bureau $40,000 to operate that function.

Their reply to me was that I couldn't contract for that function because it was not feasible. They spent $40,000 but they only got $19,000 in services provided.

So I suggested that maybe they abolish the laboratory there. The area office carried on the band analysis those two positions, and then when the band came up, they said they were going to be abolished.

Now, a year and a half later, I found out they are still operating and I was told, at first, that they were being paid from the central office.

Later, I found they were being paid by the local area office. So I again approached the area office wondering why, if the function there was not feasible, they didn't do away with it. They said it was the national office. It served reservations throughout the United States and in order to eliminate it or contract for it, we had to have a resolution from each tribe in the United States and that is virtually impossible.

So, naturally, the place is still operating. I guess it is operating at a loss and it will continue to operate, even though we are paying for it in Anadarko, we cannot abolish that laboratory.

I would like to move on now to some problems that were incurred by three tribes that formed a consortium with the Wichita. They are the Caddo and Delaware. They are located on a separate reservation in Oklahoma. There is another reservation to the south of us which is the Kiowa, Comanche, and two Apache tribes. They put all of us under one agency.

Our three tribes approached the agency in anticipating for some of the contracting. We asked that there be an agency split to form two separate agencies.

The Bureau immediately rejected this proposal. Our tribes then submitted another proposal whereby we would contract for all the portions of our agency that served our three tribes.

We had several meetings with the Bureau of Indian Affairs and the rules they used on us was that you could not contract for your total population that was being served by the agency. You could only participate in those line item sections that you were actually participating in and only that percentage.

For instance, in adult vocational training, the program there was $280,000. They told us our participation in that program was 9.2 percent so we were only allowed to contract for $25,000 of that.

They told us in the division of education, $59,000 was programmed, that we only could participate in 6 percent. So therefore, we could only contract with $3,586 out of that program.

If personnel costs were $91,000 and that 9.2 percent of that was only $8,000, they told us that that money would barely hire enough Bureau employees to monitor our contracts.

So immediately, one of our tribes withdrew. They said they could not operate a program on the balance of money that was left for us.

But you asked awhile ago for instances where the Bureau has taken money from tribes to appropriate programs themselves and this is an instance where they attempted to do this.

And in social services, they figured out the staff time that was spent on our three tribes was 6 percent of the time. The total budget for personnel was $92,000 so we would only qualify for 6 percent of that $92,000 and, there again, that was not even hiring someone to monitor our contract.

So, therefore, we thought we might even have to pay someone to look out for a contract which we had no money in. So our tribes then immediately withdrew from the offer that we had made to contract services.

I believe that had the Government set down and even figured out on a percentage basis what our three tribes constituted and allowed us to contract for that amount of money, I think we could have had a successful contract.

But when they limited us to the percentages of each program that we participated in, and we had long known that we were not getting the adequate services that we should have been getting, so our tribes rejected that. I think you are going to find that problem in any agency where you have multitribal contracts, unless there is a method devised whereby the Bureau will allocate funding per tribe so that each tribe knows what their portion of that agency funding is. Until that is established, I don't see where any of the tribes in multitribal agencies are ever going to be able to contract because all the tribes have to agree. If we did not get the other four tribes, I am sure, even though we didn't attempt to, after we found out how much money was involved, we didn't attempt to. But I doubt very seriously if they would have approved to contract for us because it definitely would have been lesser services today.

Thank you.

Chairman ABOUREZK. Thank you.

Mr. LAMAR. I would like to add that I will be giving something for the record later.

Chairman ABOUREZK. All right. It will be put in the record.

Mr. LAMAR. Thank you.

STATEMENT OF CHRIS McNEIL, JR., VICE PRESIDENT, CENTRAL COUNCIL, TLINGIT AND HAIDA INDIANS OF ALASKA

Mr. McNEIL. My name is Chris McNeil. I am a Tlingit. My ancestral home is Klukwan, Alaska, which I know you have a lot of acquaintance with by this time. I am the second vice president of Tlingit and Haida Indians of Alaska—the tribal governing body.

I would also like to introduce Mr. Al Ketzler, president of the Tanana Chiefs, and Mr. Charles Johnson, executive vice president of Kawerak, the Bering Straits Native Association.

I am pleased to be here and I am really glad to see that the committee has had a continuing interest in the implementation of the Self-Determination Act. You can see that it is incorrectly implemented.

I have a detailed testimony, which I have submitted to the committee for the record. Because of time constraints, I would like to summarize, if I could, the principal issues that are involved in the Alaskan situation.

One. We assert that the BIA implementation plan in Alaska has thwarted true Indian self determination and this is directly contrary to congressional intent in enacting that bill.

Two. We assert that the 1935 Tlingit and Haida Jurisdictional Act and its amendments should be read to conclusively determine that the Tlingit and Haida Indians of Alaska is the tribal governing body for all Tlingits and Haidas for the purpose of the Indian Self-Determination Act and other legislation.

Three. The BIA has misinterpreted the congressional intent in its definition section in the Indian Self-Determination Act on who is primarily eligible to contract and to receive grants.

Four. Even if one reads the Indian Self-Determination Act literally in its definition section without considering the Tlingit and Haida Jurisdictional Act or the Alaska Native Land Claims Act, the BIA has misapplied the tribal consent provision to create confusion and conflict among Alaska Natives.

There are several implications to this, which I would like to outline, of this very disasterous BIA implementation policy.

One. The policy that they have embarked upon will expand BIA power and it will expand their control in Alaska over Alaska Natives.

Two. Such an expansion is directly contrary to congressional intent. We know this isn't what the Congress meant.

Three. The BIA activity has caused an additional quantum of internal political fractionation among our Tlingit and Haida communities, and for that matter, among all Alaska Natives.

Four. The BIA activity threatens to break down Congress and the Tlingit and Haida peoples well-conceived regional governmental structure of the Central Council of the Tlingit and Haida Indians of Alaska.

Five. The BIA implementation plan has caused the Central Council to expend tremendous amounts of money, a lot of its resources, in order just to procure a contract and to maintain contracts that we presently have.

Six. Anyway you look at it, the BIA policy has had the effect, if not the intention, of meddling internally in the tribal politics.

Seven. The BIA has consciously duplicated functions and programs which it had supposedly contracted out to the tribe. This again is directly contrary to congressional intent.

And, finally, as, more or less, an aside, we are faced in Alaska with the double-edged sword of tribal officers and tribal members in the BIA Area Office. We are faced with recalcitrance from an Area Director who is one of our own tribal members.

Now the foregoing analytical outline is our interpretation of the BIA implementation program of the Indian Self-Determination Act in Alaska. I say again this is all directly contrary to congressional intent.

I would like to say that our interpretation is an attempt to break through the Bureau's veil of legal documents, the Commissioner's reports, the Area Director's reports. As you know, they can bury you in reports and they can and will do so in all of these cases.

The fact is that the outcome in Alaska is a result that Congress just did not intend. That is a resurgence and reconsolidation of BIA power in Alaska. Something is very wrong with this outcome, and I am here on behalf of all the Tlingit and Haida people, as their elected representative, to ask Congress to create a remedy for this untenable situation.

As an aside, I would like to say that our president, Mr. Ray Paddock, Jr., could not be here today because he had to meet in Sitka, Alaska, with a group of irate councils. We have heard it rumored from many unnamed parties that there is an attempt to create a regional IRA council, which is directly contrary and would supplant the Central Council, in effect. We don't know if the Bureau is behind this effort and we will let the committee draw its own conclusions regarding the motives of the BIA.

But in any case, we are attempting to work this out, ourselves.

If I may, I would like to fill in on some of the details of the allegations that we have made regarding the implementation of the Self-Determination Act in Alaska. The BIA policy is against congressional intent. After the BIA in Alaska is through with this well-conceived congressional act, it might better be called the "BIA Reconsolidation and Retrenchment Act". [Laughter.]

Might call it "the Indian Self-Determination Act according to the BIA." We are not sure which might be better but that is the way it is working out. I don't really care how many times one reads this act, I don't think the results in Alaska really gibes with legislative history of this act. It just goes all the way against it in every instance.

Now, how have they done this? They have done this effectively through legal manipulation of the definitions that are in the Indian Self-Determination Act itself. This is critical because if the BIA is effectively able to decide who it considers an Indian tribe, that is, it can decide with whom it will deal, then that is a lot of power. It will have a lot of power. There is no doubt about that.

If you don't go along with the BIA, one may suddenly find one's self not considered and recognized as an Indian tribe for the BIA grants and/or contracts under the Indian Self-Determination Act. If the BIA can do this, all of the other carefully conceived protections enacted in the Self-Determination Act for tribal benefit are for naught. We will not even get to the point of those protections if the BIA is able to select with whom it will deal.

In point two, the 1935 Tlingit and Haida Jurisdictional Act and its amendments was intended to establish the Central Council as the singular tribal governing body for all Tlingits and Haidas.

At the time it was the BIA who testified in order to get the amendments passed. They were saying, "Now, hey, we don't have anyone to deal with there and we need to have a single tribal body to deal with," and they came forth and testified before the congressional subcommittees and said, "We need to deal with someone," and, therefore, the amendments came into being, and to enact the council as the tribal governing body.

Similarly, during the Land Claims Act, as a legislative effort, the Congress without any doubt perceived the council as the tribal governing body for all of the Tlingits and Haida, and the BIA was willing to go along with this during the course of taking and settling the land disputes in Alaska.

But now that there seems to be a benefit, they seem to want to question whether or not we are, in effect, tribal or whether or not we are legitimate and we strongly object to this.

My point three is that the BIA has misperceived the congressional intent in its definition of Indian tribe and tribal consent. I think what Congress meant when it wrote the tribal Self-Determination Act is for culturally and politically homogeneous units.

The central council is such a unit and we are the tribal governing body. The BIA does not want to perceive us that way. And one indication of this is the last legislative history of the Self-Determination Act. We have had to study this now because we have been bombarded on the problems therein.

As you know, the House amended the Senate bill that was given—the final bill S. 1017—to include the tribal consent provision. That wasn't in the original Senate bill and they put it in there to deal with the situation where a single contract or grant serves several tribes. That consent from each tribe is a prerequisite to the contract.

What the committee was concerned with was where there were several culturally and politically distinct tribes served by one contract, there should be some protection against undesired and unrepresentative service and we can agree with that principle.

Although we concede that each IRA Council—which the BIA says are the most tribal in Alaska—has a distinct legal existence, we are still a culturally homogenous tribe and we are still one tribal unit and the BIA fails to perceive this.

We feel that we should be treated not differently than the Navajo Tribe or the Blackfeet Tribe, that we are one integral unit and the BIA says "no." We don't feel that the tribal consent provision is applicable, in other words, to our particular situation.

Point 4: We have really tried to be reasonable in this in dealing with the Bureau. We have said:

> Well, now, if that tribal consent provision is applicable to us and we have to go through all the communities and get consent, can we not get a negative consent rather than get an affirmative one, because it is very costly, and time consuming to get all of these consents from the villages.

As you know, there is a possibility in the Self-Determination Act of about 460 different tribes and in getting consent from all of those is just a tremendous problem.

Well, the Solicitor's Office came down with an opinion on May 21, 1977, and in that, they talked about this consent provision but they said that affirmative consent could be waived. Now, the Area Office said, "No, we can't waive it. We don't have the discretion to waive it." Seems like anytime we talk about discretion when it is in favor of the BIA, they have got lots of it.

When it can be for the tribe, they don't have any discretion to tie their shoelaces and you know this really does bother us.

In any event, this area director decision is really against the intent. If you go back again to the last House committee report, in there they said, expressly, that negative consent would satisfy the statute. It is right out there in the language and they said that. I believe that they have put, in fact, a 30-day provision that if tribes served under this single contract, didn't send in a contrary provision, that it would satisfy the provision of the act.

I doubt that there is a tribe or, for that matter, any government within the United States that can honestly say that they operate in complete consensus, and there will always be dissent within and we feel that is a good thing.

The thing that we object to is that the BIA, through its implementation policy, has attempted to break down our tribal structure. That is the point that we want to make here today and that is what we really object to.

By way of alternatives, we give three alternatives of remedies to this and they are all legislative. One is that we concur with the Indian Policy Review Commission's recommendations that:

One. That we amend our Jurisdictional Act in order to solve our immediate problem.

Two. That there be an All-Alaska solution in order to resolve this issue and we intend to participate in that.

Three. That there be a restructuring of the Area Office in Alaska in order to deal with the problems that we find there today.

I would like to thank you very much for this opportunity to testify.

[The prepared statement of Chris McNeil follows:]

TLINGIT AND HAIDA INDIANS of ALASKA

Testimony for

Senate Select Committee on Indian Affairs

Hearing, June 24, 1977

Albuquerque, New Mexico

I am Chris McNeil, Jr., and Vice President of the Central Council of the Tlingit and Haida Indians of Alaska, the tribal governing body of all of the Tlingits and Haidas.

I am pleased to have an opportunity to be here and to be afforded a forum to let the Committee know the kinds of problems which the Central Council of the Tlingit and Haida Indians of Alaska are presently encountering with the Indian Self-Determination Act.

The Central Council appreciates the work that went in to create the Indian Self-Determination and Educational Assistance Act. It is a landmark piece of legislation in Indian Affairs. It seeks to implement in concrete terms the concept of Indian self determination.

Unfortunately, congressional intent is being thwarted through the present BIA implementation of this Act in Alaska. One can only marvel at the ingenuity of the BIA when it does not want to do something.

Thus far the effect of the BIA implementation of the Act is to lead one to believe that the Act might be better called the "Bureau of Indian Affairs Reconsolidation and Retrenchment Act" or Indian self determination according to the BIA. The BIA has interpreted the language of the Act in such a way as to give them more, rather than less authority over all programs within the purview of the Indian Self-Determination Act. It has effectively put the BIA into the driver's seat. Congress unequivocally did not intend this result.

The BIA achieved this through their interpretation of §§4(b) and 4(c), Definitions, of the Act. The Act states that:

Section 4

> (b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;
>
> (c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

We contend that our jurisdictional act of 1935 and its amendments, and continuous administrative and congressional recognition of the Central Council of the Tlingit and Haida Indians of Alaska determines conclusively that we are *the* tribal governing body for all Tlingits and Haidas.

There are certain officers of the BIA who simply refuse to recognize that Congress has confederated the Tlingit & Haida Indians into a single tribal entity and constituted the Central Council as the general and supreme governing body thereof.

Since 1935, Congress has addressed the status of the Tlingit & Haida Indian Tribes and the Central Council in connection with several acts, most importantly those of June 19, 1935 (40 Stat. 388), August 19, 1965 (79 Stat. 543), July 13, 1970 (84 Stat. 431; 25 U.S.C. 1211) and December 18, 1971 (85 Stat. 688; 43 U.S.C. 1601 *et seq*.).

1935 Act

In this act, by which the Court of Claims was invested with jurisdiction to determine our historic cliams against the United States, Congress referred to the "Tlingit and Haida Tribes" (sec. 1); dealt with them as an entity (*passim*); and assigned to the central council the task of compiling a roll of their members (sec. 7). *See also Tlingit & Haida Indians of Alaska, et al*. v. *United States*, 147 Ct. Cl. 315, 177 F. Supp. 452 (1959); 182 Ct. Cl. 130, 389 F.2d 778 (1968). 1/

1/ For example, in the second paragraph of the last cited opinion the court states:

> By our decision of October 7, 1959 . . . we held that the Indians, *as a tribe*, had established aboriginal Indian title to six designated areas on the Alaskan (footnote cont'd. next page)

1965 Act

Reporting, by letters of March 16 and March 10, 1965, to the Chairmen of the Senate and House Interior Committees, respectively, on the need for the 1965 legislation, the Undersecretary of the Interior said in part:

> We feel that the substitution of the proposed new language for sections 1, 7 and 8 of the 1935 act will provide much greater administrative flexibility for this Department and for the Indians in programming a Tlingit and Haida award. Furthermore, it will create a representative tribal governing body with all the authority necessary to work with the Bureau of Indian Affairs and with the smaller organized groups of Tlingits and Haidas. The absence of any such body has greatly handicapped both the Bureau and the Indians during the past 30 years. (Emphasis supplied)1/

At the hearings before the House Subcommittee on Indian Affairs on the bill that eventuated in the 1965 act, Congressman Haley, chairman of the subcommittee, asked the following question of Interior's principal witness, Mr. Graham E. Holmes (then Assistant Commissioner for Legislation, BIA), and received the following answer:

> Mr. HALEY. I want to know, Mr. Holmes, the urgency of this matter. Is there some overriding urgency involved here? I want to know is this an organized tribe? Is there somebody we can deal with here.
>
> I understand there are about 15 different clans or whatever you have here and as far as I have been able to find out, there is no legal organization [with] which the Bureau of Indian Affairs may deal. I want to hear something along that line.

2/ (cont'd.)

> archipelago by their exclusive use and occupancy of that territory from time immemorial. In redress for the uncompensated and uncontested taking by the United States, equitable and just compensation, as provided for in the Act, was held owed to the Tlingit and Haida tribes. (Emphasis supplied)

* * *

1/ Letters reprinted in Hearings on H.R. 874 Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 89th Cong., 1st Sess., ser. 4, at 2 and 117 (to chm. Aspinall) and 110 (to chm. Jackson) (1965).

> Mr. HOLMES. That is one of the problems involved. Now, under the present law, in the 1935 act, there is a provision for a central committee but there is no provision in the act for arriving at or determining how the central committee is to be made up.
>
> *There is an organization which we feel is representative of the Tlingit and Haida Indians generally* but any time a group of these people band together they call themselves the central committee and they apparently can speak and have as good a claim to being the central committee as the group that we feel is more representative. *This proposed bill cures this situation because it sets up a method of selecting a representative group which can be dealt with and can be recognized as representing the Tlingit and Haida people generally*, whereas under the present law there is not any way to determine how the central committee is to be selected and there is really no official organization that is organized under any of the statutes of the United States with a recognizable organization. (Emphasis supplied) 1/

The Senate Report (S. Rept. No. 159, 89th Cong., 1st Sess. (1965)), 2/ which accompanied the bill that eventuated in the 1965 act, describes the need for the legislation in part as follows:

> Because the 1935 law did not specify how the central council would be established and function, *no recognized representative tribal governing body has existed*, and this has been a severe handicap to the tribe and to the Bureau of Indian Affairs in arriving at a consensus of how the judgment should be used. (Emphasis supplied)

The House Report (H. Rept. No. 521, 89th Cong., 1st Sess. (1965)) 3/ notes that the 1965 legislation was intended to amend the 1935 act in three principal respects:

* * *

> 2. *The existing Central Council of the Tlingit and Haida Indians is recognized*, provided its future members are elected pursuant to rules and regulations found by the Secretary

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1/ *Hearings*, cited in preceding note, at 16.

2/ Reprinted in *Hearings*, *supra*, at 108 *et seq.*

3/ Reprinted in *Hearings*, *supra*, at 115 *et seq.*

> of the Interior adequate to assure fair representation of the Tlingits and Haidas wherever they may live in the United States or Canada. (Emphasis supplied)
>
> 3. The council is authorized to prepare plans for the use of the judgment money, including per capita distribution, and the Secretary of the Interior is authorized to prepare a roll of persons of Tlingit or Haida blood residing in various communities or areas of the United States or Canada on the date of the act. Actual use or distribution of the funds will, however, await a further act of Congress, except for those needed for organizational, administrative and litigation expenses, and the like.

While it is undisputed that a principal focus of the Congress and the Department of the Interior in 1965 was on enhancing the organizational capacity of the Tlingit and Haida Indians to prosecute their claims against the Government and to administer the anticipated proceeds, it is equally clear that it was intended and contemplated that the Central Council provided for by the 1965 act, when organized in accordance with the requirements thereof, was to be recognized as the general and supreme governing body of the Tlingit and Haida Indians for all purposes, and not just for those related to their claims.

No other conclusion can be squared with the history of the 1965 act.

That history also demonstrates beyond cavil that the act was understood and intended 1) to superimpose the Central Council as a regional governing body over Tlingit and Haida villages and communities without regard to whether they had previously organized under the Indian Reorganization Act, and 2) to settle, once and for all, the issue of what organization would be recognized as representative of the Tlingit & Haida Tribes as a whole.

Following enactment of the 1965 act, the Central Council organized under the rules of election approved by the Secretary of the Interior and a constitution. Copies of these documents are attached hereto as appendices C and D, respectively.

As can be seen from the rules of election, the Central Council is a democratically elected body, truly representative of all the Tlingit and Haida Indians.

Article I of the Constitution of the Central Council provides:

> The functions of the Central Council of the Tlingit and Haida Indians of Alaska shall be to serve as the general governing body of the Tlingit and Haida Indians of Alaska, to promote their welfare, and to exercise the powers granted by the Act of June 19, 1935 (49 Stat. 388), as amended by the Act of August 19, 1965 (79 Stat. 543), and such other powers as it may lawfully exercise or be granted.

Section 1 of Article V in part provides:

> Subject to applicable laws and regulations of the United States, the Central Council shall have full powers to govern, conduct and manage the affairs and property of the Tlingit and Haida Indians of Alaska, including, without limitation, the following:
>
> * * *
>
> b. To negotiate and enter into contracts with persons and entities of every kind and description, public and private;
>
> * * *
>
> f. To consult with and advise any and all persons, officers, and entities, public and private, concerning subjects and matters affecting the interests of the Tlingit and Haida Indians of Alaska.
>
> g. To charter or otherwise authorize and provide for the organization of subordinate groups or entities to perform governmental or proprietary functions for the Tlingit and Haida Indians of Alaska, and to delegate to such subordinate groups or entities such powers as it shall decide under such rules and regulations and subject to such limitations and conditions as it shall prescribe;
>
> * * *

The Central Council has been operating under these organic documents for more than a decade with the full knowledge and approval of the Congress and the Department of the Interior.

1970 Act

The 1965 act stipulated, should the Tlingit & Haida Tribes recover a judgment against the United States, that the funds appropriated to pay the same should "not be available for advances, except for such amounts as may be necessary to pay attorney fees, expenses of litigation, organizational, operating and administrative expenses of the official Central Council, and expenses of program planning, until after legislation has been enacted that sets forth the purposes for which said funds shall be used."

In January 1968, the Tribes recovered a judgment against the United States in the total amount of $7,546,053.80, and Congress appropriated funds to pay this judgment in July of that year.

Bills providing for the use and disposition of the judgment funds were introduced in both houses of Congress in 1969, and extensive hearings were held, particularly by the Senate Subcommittee on Indian Affairs, in 1970. 1/

By testimony, written communications, and the submission of exhibits for the record, the President of the Central Council thoroughly informed both the Senate and House subcommittees about the organization, operations, and accomplishments of the Central Council.

Writing on March 6, 1970, to Senator McGovern, chairman of the Senate subcommittee, he pointed out:

> The Central Council functions as the general governing body of the Tlingit and Haida Indians. The Council was recognized and established as an official organ for the governance of the Tlingit and Haida Indians by an act of Congress approved in 1965. This act required the Council to prepare and submit for approval to the Secretary of the Interior a set of rules for the election of delegates that

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1/ Hearings on S. 2628 and S. 2650 Before Senate Subcommittee on Indian Affairs of Comm. on Interior and Insular Affairs, 91st Cong., 2nd Sess. (1970).

> would insure that the Council would be representative and democratic. The Rules of Election formulated by the Council and approved by the Secretary in 1966, together with the Constitution of the Council, are the principal organic documents of the Tlingit and Haida Indians. . . .
>
> The Rules, among other things, designate the communities eligible to elect delegates to the Central Council (there are 18 such communities at the present time), and prescribe the terms of delegates, the qualifications of electors, the representational formula, and the duties of local election officials. They also set out the procedures for the nomination of candidates, for the registration of voters, for the conduct of elections, and for the casting of absentee ballots.
>
> The Constitution establishes the Central Council as the general governing body of the Tlingit and Haida Indians and provides that, agreeably to the laws and regulations of the United States, it shall have, among others, the powers to acquire and dispose of property; to enter into contracts; to borrow and raise money; to employ persons to render professional, technical and other services; to authorize the use and expenditure of funds belonging to the Tlingit and Haida Indians; and to authorize and provide for the organization of subordinate entities to perform governmental and proprietary functions. (Emphasis supplied) 1/

Commenting on the Senate bills, as Acting Secretary of the Interior, Russell E. Train observed that:

> The 1935 Act . . . was further amended by the Act of August 19, 1965 (79 Stat. 543), to provide for a Central Council to represent the Tlingit and Haida Indians.

* * *

1/ Letter is reprinted in Hearings cited in last previous note, at 53-55.

> The Central Council of the Tlingit and Haida Indians of Alaska is presently composed of delegates from 18 communities with representative population of Tlingit and Haida Indians. 1/

And the Department of the Interior itself supplied Congress, among the material submitted with the Acting Secretary's comments, Resolution No. 68-69 - 2 of the Central Council, calling for the organization or reorganization of the Tlingit and Haida communities as constituent parts of the Central Council, and the model community constitution suggested for this purpose by the Central Council. 2/

Constitutions along the lines of the model have since been adopted by most, if not all, of the communities represented on the Central Council. It is the Community Councils organized in this manner, as constituent and subordinate parts of the Central Council, that are now functioning as the general governing bodies of these communities.

Having thoroughly reviewed the organic documents, structures, operations and achievements of the Central Council, the Interior Committees of both houses of Congress filed reports to accompany the judgment fund distribution bills that unequivocally set forth their understandings of the status of the Central Council.

The Senate report states, without qualification:

> A 1965 statute authorized a Central Council as the governing body of the Tlingit and Haida Indians. (Emphasis supplied) 3/

1/ Letter of December 19, 1969, to Senator Jackson reprinted in *Hearings*, *supra*, at 2-4.

2/ *Hearings*, *supra*, at 33-36.

3/ S. Rep. No. 91-848, 91st Cong., 2d Sess., 1, (1970).

It is noteworthy that the Senate Committee was so impressed by the organization and achievements of the Central Council that it concluded the Council was fully capable of managing the funds and (footnote cont'd. over)

The House report states, without limitation:

> Under a 1965 statute a Central Council was organized as the governing body of the Tlingit and Haida Indians, and it has been functioning effectively since then. (Emphasis supplied) 1/

In light of what preceded the filing of these reports, the use of the definite (and exclusive) article "the," in the phrases "the governing body," used therein was clearly considered and intentional.

3/ (cont'd.)

affairs of the Tlingit & Haida Indian Tribes without supervision by any outside agency, and reported a bill authorizing use of the judgment funds by the Council from which the conventional requirements of the Secretarial oversight had been purposefully omitted. The Committee stated:

> The general pattern that has been used for most tribes in recent years when per capita distributions were not contemplated is to authorize the money to be used for any purpose authorized by the tribe and approved by the Secretary of the Interior after the Congress is satisfied that the tribe's general plans are sound. However, in the case of the Tlingit and Haidas, the Committee has stricken the language which would make the tribal plans subject to being "approved by the Secretary of the Interior." These Indians have demonstrated that they are capable of managing their own affairs. They have developed sound plans for the use of their judgment funds and the Committee believes they can carry out those plans without any oversight by the Secretary. S. Rep., *supra*, 2.

1/ H.R. Rep. No. 91-881, 91st Cong., 2d Sess., 1 (1970).

1971 Act

Again and again, in connection with its consideration of proposals to settle the overall claims of the Alaska Natives (which culminated in the Alaska Native Claims Settlement Act of December 18, 1971), the attention of Congress was called to the structure and activities of the Central Council as the general governing body of the Tlingit and Haida Tribes. 1/

Testifying before the Senate Interior Committee on April 29, 1971, the President of the Central Council referred again to the fact that the Central Council is the general governing body of the Tlingit and Haida Indians, and was granted leave by the chairman to submit a sketch of the organization and accomplishments of the Council for the record. Thereafter, he advised the chairman by letter of May 7, 1971, that the additional material he desired to present was contained in a document entitled: "Alaska Native Land Claims and Post Settlement Planning," already a part of the record.

The document referred to is printed in *Hearings on S. 35, et al. Before Sen. Comm. on Interior and Insular Affs.*, 92d Cong., 1st Sess., pt. 1, 357-361 (1971), and canvasses the organization and activities of the Central Council as the general governing body of the Tlingit & Haida Tribes.

Section 7 of the Alaska Native Claims Settlement Act of December 18, 1971, in part provides:

> For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment of this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:
>
> * * *
>
> (10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);
>
> * * *

1/ See, e.g., *Hearings on S. 1830 Before Senate Comm. on Interior and Insular Affs.*, 91st Cong., 1st Sess., pt. 2, at 333 (1969) *Hearings on H.R. 13142, et al., Before House Subcomm. on Indian Affairs of the Comm. on Interior and Insular Affairs*, 91st Cong., 1st Sess., pt. II, at 510 (1969); *Hearings on S. 35 and S. 835 Before Sen. Comm. on Interior and Insular Affs*. 92nd Cong., 1st Sess., pt. 1, at 357-361. (1971).

The act specifically designated the Central Council as the existing organization having exclusive authority and responsibility on behalf of the Natives of Southeast Alaska to implement its provisions, including, among other things, to secure the organization of the regional corporation for the Natives of southeastern Alaska (Sealaska Corporation).

Three times since 1965 Congress has addressed issues involving the organization for purposes of self government of the Tlingit & Haida Indian Tribes.

In 1965, it was advised by the Department of the Interior of the need to provide for the organization and recognigition of a tribal governing body, truly representative of these Tribes, with which the Department could deal, not just in connection with matters relating to their claims against the Government, but generally.

Congress responded by passing the 1965 Act, which it had been informed by the Department would accomplish this purpose. The reports of the Interior Committees which underlie that act show beyond cavil that this is what Congress understood and intended to be its effect.

Thereafter the Central Council was organized in accordance with the requirements of the 1965 act under rules of election and a constitution which expressly established it as the general and supreme governing body of the Tlingit & Haida Tribes.

These documents and the operations of the Central Council since its organization have subsequently been laid before and considered by Congress in connection with the enactment of the Tlingit & Haida judgment fund distribution act of 1970, and the Alaska Native Claims Settlement Act of 1971.

In their reports accompanying the bills that became the 1970 act, the Interior Committees of both houses of Congress unequivocally stated their understandings that the Central Council organized under the 1965 act is "the governing body of the Tlingit and Haida Indians."

And, in the Alaska Native Claims Settlement Act of 1971, Congress assigned the implementive and organizational responsibilities for the Natives of Southeast Alaska exclusively to the Central Council.

In light of these acts of Congress and of their histories, there can be no legitimate doubt that the Tlingit & Haida Indian Tribes have been recognized by Congress as a single tribal entity or that the Central Council has been constituted as the general and supreme governing body thereof.

It took the Tlingit and Haida people many years to evolve a strong central government that could speak and act for the Tribes as a whole. As the history of the 1965 act shows, until that time at least, the Bureau actively assisted us in our efforts to constitute a Central Council that, taking precedence over our numerous smaller clan, village and community organizations, could function as the supreme governing body of the Tlingit and Haida Tribes as a whole. The Central Council is not the aggregate of smaller Tlingit and Haida organizations, rather the latter are now subdivisions of the Council. The constituents of the Central Council are all of the Tlingit and Haida Indians as individuals.

For over six years the Central Council has been managing the BIA's Southeast Alaska Agency and administering Native affairs in that area under contract with the Department of the Interior. The continuation of this highly successful contract, one of the first of its kind, is presently threatened by the area director's misunderstanding of the legal nature of the Central Council and misconstruction of the Indian Self Determination Act. His insistence on the primacy, for purposes of the Self Determination Act, of such entities as village councils organized under the Indian Reorganization Act, if unchecked, will fractionalize the Tlingit & Haida Tribes - will restore the very condition that the Congress, the Tlingit and Haida people, and the Secretary of the Interior struggled so long to remedy. While he arrays his undertaking to redivide our people and debilitate our strong central government in the garments of idyllic democracy and the rhetoric of local option, it still stinks of paternalism and of the bureaucrat's hoary tactic of "divide and dictate".

The Juneau Area Director has conceded that the Central Council of the Tlingit and Haida Indians of Alaska are a tribal governing body, but not the tribal governing body. We strongly object to this opinion and believe that the Tlingit and Haida jurisdictional act should be conclusive on this question.

However, if one evaluates the definitions within the Indian Self-Determination Act itself, one may be able to conclude that the central council, THIA, is the tribal governing body for all Tlingits and Haidas.

The provision of contention is Section 4(c) which requires tribal consent as a pre-requisite to a contract or grant where it will serve more than one tribe. This provision was inserted as an amendment to S1017 by the House Committee on Indian Affairs just prior to its enactment into law. The House Committee report (Report 93-1600; December 16, 1974) states that this provision was inserted to take care of the situation where one contract or grant would serve several tribes. The committee used Western Washington, Nevada and the New Mexico Pueblos as examples of what they meant. These examples suggest that the committee defined tribes as culturally homogeneous, political units. They wished to provide protection for tribes where one contract or grant might serve several culturally and politically distinct Indian tribes. This situation is not applicable to Southeastern Alaska where the communities are culturally homogeneous. According to the Congressional intent of this act, there are no tribes in Southeastern Alaska for the purposes of Section 4(c) of the Act. There is one tribal governing body. The Central Council is the tribal governing body of all of the Tlingit and Haidas.

Even if Section 4(c) is applicable to the Alaska Native situation, the BIA has incorrectly implemented the section.

The Area Director has decided that only affirmative consent from each eligible tribe within the overlapping jurisdiction will meet the needs of the provision. The Associate Solicitor stated on May 21, 1976 that the affirmative/consent provision may be waived, but the Area Director has refused to waive it despite the tremendous cost involved in regional tribes in complying with it. However, the House Report of December 16, 1974 sheds further light on what they intended when they inserted the tribal consent provision. They suggested in the Legislative history that either positive or negative implied consent would meet the requirements of the section. On the latter issue, they stated that if "..each Indian tribe to be served...has not objected to within 30 days of notice from the appropriate Secretary..." that this would satisfy the consent provision. The Area Director's decision is directly contrary to Congressional intent.

Finally, the Area Director administratively determined that the IRA's were the "most tribal" in Alaska. An absolute preference is now given to the Indian Reorganization Act communities for all contracts and grants under the Self-Determination Act. We believe that the Area Director has exceeded his discretion in setting a priority in which the IRA councils are the pre-eminent tribal organization in Alaska.

To place this in a historical context, one should note that prior to the advent of the Self-Determination Act, most of the IRA councils were defunct for all practical purposes. One existed and operated for governmental and business purposes, while two existed for business purposes only.

The Central Council does not object to local IRA councils or the concept of local government. However, the recent IRA activity is mostly a product of BIA inducements. They have actively induced reorganization of defunct IRA's through Section 104 grant incentives while at the same time denying the benefits of the Self-Determination Act to the Central Council and its local community councils (see appendix for central council organization). Without surmising the motives of the BIA area office, one can outline several direct implications of this activity.

1) This activity under the auspices of the Indian Self-Determination Act has caused political fractionation among Tlingit and Haidas. The Central Council does not deny that there is and will continue to be political dissent among our people. However, an examination of the THCC political structure indicates that we presently have a well-defined method of dealing with dissent. Through our democratic and fully representative one-man, one vote structure, we are able to speak with one voice, and act on behalf of all of the people. The BIA implementation program, however, may cause a complete upheaval of the Central Council as we now know it.

A second implication is that the BIA implementation plan keeps the BIA in control, and even increases their power. They have exploited the language of Section 4(b) and (c) of the Act in order to be able to select which Alaska Native political entity they will administratively recognize as an Indian tribe. They will become increasingly more powerful if allowed to pick and choose with whom they will deal. It may only be a convenient coincidence that the BIA has chosen the smallest possible political unit (the IRA's) with which to deal. With less resources and expertise available, the BIA will be able to call the shots. The smaller IRA's will be less able to question and effectively counteract adverse BIA decisions.

Another effect of the BIA implementation plan is that it is meddling in the internal tribal politics of the Tlingit and Haida. We do not believe that this is a BIA function in any case, and was certainly not the intent of Congress in enacting the Self-Determination Act.

A second major way in which the Alaska BIA implementation plan is contrary to Congressional intent is that instead of replacing a BIA function through a contract, the BIA has duplicated functions through contracting. The Central Council was one of the first tribes to contract from the BIA in 1971 under the authority of the Buy Indian Act. It contracted almost an entire agency function. However, during this last fiscal year, the Area Director summarily withdrew $44,000 from the contract and recreated another BIA Southeast agency (albeit a smaller version). This "new" BIA agency is attempting to carry out some of the same functions which were supposedly contracted to the Central Council. The act itself calls for an orderly transition from BIA to tribal control. We do not believe that it meant to create an even more burgeoning BIA bureaucracy and tribal contracts which overlapped. This is not only extremely ineffective, but an outright waste of U. S. Government money. While the Area Office has sought to increase its own staff, it has continuously advised the Central Council that it either doesn't have enough money for new programs or that there should be cutback. We object to this entire concept and hope that Congress and the administration officials see the folly and waste in such a position.

In sum, we contend that the BIA administration has taken one of the most thoughtful and progressive congressional policies in the last thirty (30) years and turned it on its head. It has, in fact, worked against true Indian Self-Determination.

Although we would welcome a timely administrative remedy to our problem, we do not realistically see one forthcoming. At this point, we feel that a more systemic legislative solution is necessary. The American Indian Policy Review Commission has recommended legislative solutions which we wholeheartedly endorse. Because our situation with a Congressional jurisdictional act distinguishes us somewhat from the rest of Alaska, an amendment to that Act which would effectively recognize the Central Council as the tribal governing body for all Tlingit and Haidas would solve our immediate problems. A copy of proposed language is attached. The Policy Review Commission also suggested a separate state-wide solution, which we would also willingly participate and support.

The Policy Review recommendation would prioritize the eligible Indian tribes named in the Self-Determination Act in such a way that the regional associations or tribes would have a first option for a grant or contract. We feel that this two-prong approach would not be inconsistent with one another for the Central Council, but that one would actually serve to reinforce the other.

In sum, we hope that the Congress will enact a legislative solution which will forthrightly and unequivocally tell the BIA that it means what it said when it enacted the Indian Self-Determination Act.

I would like to again thank you for affording me this opportunity to be here and discuss these problems today.

CENTRAL COUNCIL
TLINGIT AND HAIDA INDIANS OF ALASKA
12th ANNUAL CONVENTION
APRIL 5, 6, & 7, 1977
Juneau , ALASKA

77

THCC RESOLUTION 77 - 78 - 2

TITLE: TO DIRECT THE PRESIDENT OF THE CENTRAL COUNCIL TO SEEK LEGISLATION REAFFIRMING THE STATUS OF THE TLINGIT AND HAIDA INDIAN TRIBES AS A SOVEREIGN AND SINGLE INDIAN TRIBAL ENTITY AND THE STATUS OF THE CENTRAL COUNCIL AS THE GOVERNING BODY THEREOF.

SUBMITTED BY:
SELECT COMMITTEE ON RESOLUTION #2
DAVID KATZEEK, CHAIRMAN

WHEREAS, the Tlingit and Haida Indian Tribes of Alaska are historic Indian tribes that have been consolidated and recognized by the United States as a single tribal entity;

WHEREAS, by the Act of June 19, 1935, 49 Stat. 388, as amended by the Act of August 19, 1965, 79 Stat. 543, and other Acts, Congress constituted the Central Council as the general and supreme governing body of the consolidated Tlingit and Haida Indian Tribes; and

WHEREAS, it would be desirable and in the best interests of the tribes and the Central Council to obtain legislation reaffirming their respective statuses;

NOW THEREFORE BE IT RESOLVED, that the President of the Central Council is authorized and directed to seek the enactment by Congress of legislation reaffirming the status of the Tlingit and Haida Indian Tribes as a sovereign and single tribal entity and reaffirming the status of the Central Council as the general and supreme governing body of such entity: provided that nothing in such legislation should eliminate the eligibility of any other qualified Native village or community organization within or under the jurisdiction of the Central Council to receive benefits under P.L. 93-638, the Indian Self-Determination and Education Assistance Act, 88 Stat. 2203.

RESOLUTIONS COMMITTEE RECOMMENDATIONS: DO PASS

REFERRED: SELECT COMM. ACTION: AMENDED AND REC. PASSAGE

CONVENTION ACTION: PASSED UNANIMOUSLY 4/7/77

Appendix B.

A BILL

To amend the Act of July 13, 1970, 84 Stat. 431 (25 U.S.C. 1211), relating to the Tlingit & Haida Indian Tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 13, 1970, 84 Stat. 431 (25 U.S.C. 1211) is amended by adding at the end thereof the following: "The confederated Tlingit & Haida Indian Tribes constitute a single recognized tribal entity of which the Central Council, organized as provided by the Act of June 19, 1935, 49 Stat. 388, as amended by the Act of August 19, 1965, 79 Stat. 543, is the general and supreme governing body."

Appendix C.

RULES FOR THE ELECTION OF DELEGATES TO THE OFFICIAL CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIANS

1. Delegates to the Central Council shall be elected by each of the following Communities:

   Anchorage, Alaska
   Angoon, Alaska
   Craig, Alaska
   Haines, Alaska
   Hoonah, Alaska
   Hydaburg, Alaska
   Juneau, Alaska
   Kake, Alaska
   Kasaan, Alaska
   Ketchikan, Alaska
   Klawock, Alaska
   Klukwan, Alaska
   Metlakatla, Alaska
   Pelican, Alaska
   Petersburg, Alaska
   Saxman, Alaska
   Sitka, Alaska
   Wrangell, Alaska
   Yakutat, Alaska
   San Francisco, California
   Seattle, Washington

   The Central Council may, from time to time, by duly adopted resolutions, designate additional Communities from which delegates shall be elected in accordance with the provisions of these Rules. From time to time the Central Council may also delete from the list of Communities and merge two or more Communities into one.

2. Each Community shall elect one delegate to the Central Council for each 100 persons or fraction thereof registered on the official voting list of that Community. A Community may also elect alternate delegates who may at meetings of the Central Council sit in place of regular delegates not in attendance.

3. Delegates shall be elected for terms of two (2) years and shall serve until their successors are elected and qualified to the Central Council. Vacancies in the offices of delegates from any Community shall be filled as provided by the Constitution of the Central Council.

4. Voting by proxy will not be permitted.

5. Each eligible person of Tlingit and Haida blood, as defined in Rule 21 (b) of these Rules, who is at least 18 years old on or before the date of any regular election held under these Rules, shall be entitled to register on an official Community voting list as follows:

    (a) the roll of the Community where he resides as defined in Rule 21 (h) of these Rules.

    (b) if he does not reside within a Community, the roll of the Community nearest to the place where he resides; provided, that it is within 100 miles of the place of his residence.

    (c) if he does not reside within a Community or within 100 miles of a Community, the roll of any Community of his choice.

6. Registration to vote shall be accomplished by completing and filing with the Registrar of the appropriate Community the registration form prescribed by the Central Council. The Local Election Committee shall publish, in accordance with Rule 21 (f) of these Rules, not less than 50 days in advance of the final date for registering, a notice setting forth (a) the period and final date for registering to vote which final date shall be not less than ten days prior to the election, and (b) the place for obtaining and for filing the registration form.

Registration forms shall be delivered by the Registrar to all calling in person, and, upon request, shall be mailed or otherwise delivered to persons desiring to register who will be temporarily absent from the Community throughout the period of registration, or who, by reason of illness or disability, are unable to call in person for them.

7. The Registrar of each Community shall prepare an alphabetical list of all persons registering to vote in that Community. This official voting list shall be open to inspection by local membership, and any person eligible to appear thereon may challenge the inclusion of the name of any person on the official voting list of the Community by filing a written protest with the Local Election Committee no later than seven days prior to the election date. The Local Election Committee shall dispose of such protests no later than five days preceding the election date. The decision of the Local Election Committee shall be final, except that the registration and election procedures and the rolls of Communities may be reviewed by the Central Council to assure that they conform to these Rules, and the Constitution and resolutions of the Central Council. The registrar of each Community shall work closely with the Central Council and provide the Central Council with a copy of the official voting list of his Community. If any protest is upheld, the protested name shall be stricken from the list.

8. Subject to the provisions of these Rules, and the Constitution and any applicable resolutions of the Central Council, nominations of candidates for the offices of delegates from each Community shall be made in accordance with procedures prescribed by the Local

Election Committee, in accordance with Robert's Rules of Order. The name of each qualified nominee shall be placed on an official ballot. In order to qualify as a candidate or nominee for election as a delegate from any Community, a person must be registered on the official voting list of that Community.

9. The Local Election Committee Chairman of each Community shall arrange to publish, in accordance with Rule 21(f) of these Rules, not less than 30 days before an election, a notice setting forth:

    (a) the date of election;

    (b) the names of the qualified nominees;

    (c) the place and hours the polls will remain open; and

    (d) the procedures to be followed for voting, including those for absentee voting.

10. The Local Election Committee of each Community shall conduct elections by:

    (a) preparing and having available at each polling place on election day a sufficient number of official ballots;

    (b) seeing that no person whose name does not appear on the official Community voting list receives a ballot;

    (c) seeing that the ballot is cast by the voter and that the voting list is checked to show such person has voted;

    (d) making and keeping a record of the absentee ballots mailed or delivered, showing to whom mailed or delivered, the date thereof, the address of the absentee voter, and the date of return of the ballot and from whom received;

    (e) keeping the ballot boxes locked at all times except when the ballots are being counted;

(f) counting the regularly cast ballots and absentee ballots immediately after the close of the polls on the day of election;

(g) certifying promptly the election returns to the Central Council following all elections;

(h) returning all ballots cast and all unused and spoiled ballots to the ballot box, which box shall be marked and sealed and retained by the Chairman of the Local Election Committee until the term of the Local Election Committee expires, at which time the ballots shall be destroyed.

11. Each registrant on the official voting list of a Community may vote for the number of delegates that the Community is entitled to elect. The corresponding number of candidates in each Community receiving the highest number of votes shall be declared elected.

12. Local Election Committees and Registrars shall be selected pursuant to the Constitution or resolutions of the Central Council. No person shall serve as a Community Registrar or as an election official if he is a candidate in an election.

13. The polls shall remain open in each Community during the hours fixed by the Local Election Committee. The Local Election Committee shall be represented at each polling place.

14. Voting shall be by secret ballot. Any registrant on the official voting list may vote by presenting himself at the polls of the Community in which he is registered, within the prescribed voting hours, announcing to the officials his name and address, marking and placing in the ballot box the ballot which shall be handed to him. A registrant who is a permanent non-resident of the Community where he is registered,

or who expects to be absent from the Community on election day, or who is ill or disabled, and duly causes the Local Election Committee to be notified of such circumstance, shall be entitled to vote by absentee ballot as provided by Rule 15 of these Rules.

-15. The Local Election Committee shall give or mail ballots for absentee voting to registrants who make requests therefore in sufficient time to permit such registrants to execute and return the same on or before the close of the polls on the date of election. Together with the ballot, there shall be delivered to such absentee voter:

(a) an inner envelope bearing on the outside the words "Absentee Ballot;"

(b) an outer envelope addressed to the Local Election Committee; and

(c) a certificate in form as follows:

I, ____________________________, do certify that I cannot appear at the polling place on the date of election because (here indicate one of the following reasons):

☐ I am a permanent non-resident

☐ I expect to be absent from the Community

☐ of illness

☐ of physical disability

I understand that if I do not return by ballot before the polls close on election day, or do not return the completed and signed certificate along with my ballot, my ballot will not be counted. I further certify that I have marked the accompanying ballot in secret.

(signed)______________________________
Voter

The voter shall mark the ballot, place it in the envelope marked "Absentee Ballot," seal the envelope and place it and the completed and signed certificate in the outer envelope, and seal and mail it or cause it to be timely delivered to the Local Election Committee.

16. Any registrant may challenge the election results of his Community within three days of the announcement of such results by filing, with the President of the Central Council or the Chairman of a duly constituted committee of the Central Council, a written challenge including therein his grounds therefore and substantiating evidence. If, in the opinion of the Central Council or the duly constituted committee of the Central Council, as the case may be, the objections are valid and are of the nature to so warrant, it shall order a re-count of all ballots cast in the Community or a new Community election. Should a new election be ordered, the previous nominees who qualify shall be the candidates and the notice of election and election procedure shall be as above provided.

17. The Central Council shall, pursuant to its Constitution, or by resolutions, prescribe the period for holding general elections of delegates. Provisions and procedures for general elections shall conform to the election provisions and procedures of these Rules.

18. The official voting list of each Community shall continue in effect from year to year. Prior to the holding of any general election of delegates who shall take office upon or following the expiration of the term of office of their predecessors in office, and during a period which shall be prescribed or approved by the Central

Council, the Registrar of each Community shall publish a notice in accordance with Rule 6 of these Rules that the official voting list shall be opened to receive new registrations for a specified period of not less than 20 days. Upon the completion of the official roll of the Tlingit and Haida Indians called for in the Act of June 19, 1935, as amended, each Registrar shall adjust the official voting list of his Community by striking therefrom the name of any registrant whose name is not on such official roll. The Registrar shall delete from the official Community voting list the names of all deceased persons and persons no longer eligible to remain as voters of that Community. Written notice sent by first-class mail to his last known address shall be given to any living person whose name is deleted. Any person eligible to appear on an official voting list of a Community as provided by these Rules may challenge the addition or deletion of any names on the list of that Community in a like manner as provided in Rule 7 of these Rules.

19. The expenses incurred in complying with these Rules which may be allowable for payment or reimbursement under the provisions of the Act of June 19, 1935 (49 Stat. 388), as amended, shall be supported by appropriate records and certified to the Central Council.

20. These Rules may be amended from time to time, subject to the approval of the secretary of the Interior, by the Central Council.

21. Definitions - As used in these Rules:

(a) "Central Council" means the official Central Council of Tlingit and Haida Indians as defined in Section 7 of the Act of June 19, 1935 (49 Stat. 388), as amended by the Act of August 19, 1965 (79 Stat. 543).

(b) "Eligible person of Tlingit or Haida blood" means only a person of Tlingit or Haida blood residing in the United States or Canada who was a legal resident of the Territory of Alaska on June 19, 1935, or prior thereto, or who is a descendant of a person of Tlingit or Haida blood who was a legal resident of the Territory of Alaska on June 19, 1935, or prior thereto.

(c) "Community" means a Community included on the list set forth in Rule 1 of these Rules as amended from time to time by the Central Council pursuant to Rule 1 of these Rules.

(d) "Local Election Committee" means a Local Election Committee whose members are selected for a Community pursuant to Rule 12 of these Rules.

(e) "Registrar" means a Registrar selected for a Community pursuant to Rule 12 of these Rules.

(f) "Publish" means to give notice by newspaper, radio television, continuous public posting of notices, any other news media, or by any one or more of these methods as designated by the Local Election Committee.

(g) "He, him, or his" means he or she, him or her, his or hers.

(h) "The Community where he resides" means the Community in which he makes his home, owns real property, or votes in state elections; except that a person who resides in Ketchikan who is formerly a resident of Saxman may elect to be regarded as a member of Saxman for purposes of these Rules, and except that a person who resides in Haines who is formerly a resident of Klukwan may elect to be regarded as a member of Klukwan for purposes of these Rules.

APPROVAL

Pursuant to Section 7 of the Act of June 19, 1935 (49 Stat. 388), as amended by the Act of August 19, 1965 (79 Stat. 543), and to authority delegated to the Area Director, Juneau, by letter of September 15, 1970, from Harrison Loesch, Assistant Secretary of the Interior, the foregoing Rules for the Election of Delegates to the Official Central Council of Tlingit and Haida Indians, incorporatin amendments adopted by appropriate actions of the Central Council and the Executive Committee at meetings held in Wrangell, Alaska on March 25-27, 1971, are hereby approved this ________ day of ________________, 1971.

Morris E Thompson
Area Director
Juneau Area Office

CENTRAL COUNCIL

tlingit and haida indians of alaska

CONSTITUTION OF THE CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIANS OF ALASKA

ADOPTED APRIL 17, 1973
AMENDED APRIL 14, 1976

ARTICLE I

FUNCTIONS

The functions of the Central Council of the Tlingit and Haida Indians of Alaska shall be to serve as the general governing body of the Tlingit and Haida Indians of Alaska, to promote their welfare, and to exercise the powers granted by the Act of June 19, 1935 (49 Stat. 388), as amended by the Act of August 19, 1965 (79 Stat. 543), and such other powers as it may lawfully exercise or be granted.

ARTICLE II

COMPOSITION

The Central Council shall be composed of delegates from designated local communities of the Tlingit and Haida Indians of Alaska who shall be chosen in accordance with Rules of Election adopted and approved as provided in section 7 of the Act of June 19, 1935, as amended.

ARTICLE III

ELECTIONS

Section 1. General elections for selection of delegates to the Central Council shall be held every even numbered year on the first Tuesday in March, unless for compelling reasons the Central Council by resolution shall designate a different day for a particular general election.

Appendix D.

Section 2. Unless a Community entitled to elect delegates to the Central Council shall prescribe a different method approved by the Central Council.

a. The Central Council shall appoint the members of the Local Election Committee and the local Registrar for each Community from the names appearing on the current list of eligible voters of the Community; and

b. A vacancy occurring during a term in the position of delegate to the Central Council shall be filled by holding a special election in that Community where a vacancy occurs. The election shall be conducted in accordance with Rules of Election adopted and approved as provided in Section 7 of the Act of June 19, 1935, as amended, except that, prior to such election, the voting roll of the Community need not be opened to receive applications for registration.

ARTICLE IV

MEETINGS

Section 1. The Central Council shall meet annually at a time and place set by the Central Council, provided, that if the Central Council does not fix a time and place for such meeting then it shall be held at the call of the President; be it further provided that the Central Council, unless for some compelling reason, meet annually on the first Thursday in April at a place designated by the Central Council, or the President, if not so designated, at Juneau.

Section 2. Special meetings may be called by the President, or by one-fourth of the delegates provided that the call is sanctioned by the majority of delegates from their local communities. Be it further provided, that the call is in fact a bonafide action complying with the request of the chapter, or chapters, petitioning for the special convention. Resolution of the problematic area, presented by the call, will be the initial order of business with the conduct of other business, as time permits, at the conclusion of the special order of business.

Section 3. At all meetings of the Central Council a quorum shall consist of a majority of the delegates, no business shall be transacted unless a quorum is present. All meetings shall be conducted in conformance with the Constitution and By-Laws of the Tlingit and Haida Indians of Alaska and Robert's Rules of Order.

ARTICLE V

POWERS OF THE CENTRAL COUNCIL

Section 1. Subject to applicable laws and regulations of the United States, the Central Council shall have full powers to govern, conduct and manage the affairs and property of the Tlingit and Haida Indians of Alaska, including, without limitation, the following:

a. To acquire and dispose of property, real and personal, by any and all means, for such consideration and upon such terms as it shall decide;

b. To negotiate and enter into contracts with persons and entities of every kind and description, public and private;

c. To borrow and raise money by all lawful means, and to pledge the credit of the Tlingit and Haida Indians of Alaska;

d. To employ lawyers and other persons to render professional, technical, and other services of every kind and description;

e. To authorize the advance, expenditure, use, investment and reinvestment of funds on deposit in the Treasury of the United States to the credit of the Tlingit and Haida Indians of Alaska in such manner and for such purposes as may be authorized by Congress;

f. To consult with and advise any and all persons, officers, and entities, public and private, concerning subjects and matters affecting the interests of the Tlingit and Haida Indians of Alaska;

g. To designate communities which may elect delegates to the Central Council, to prescribe the qualifications for delegates, as defined in the Rules of Election, and to determine its membership.

Section 2. The Central Council shall possess such powers as are incident or necessary to the execution of the powers set forth above, and such further powers as it may from time to time be granted.

Section 3. The Central Council shall promulgate By-Laws for the purpose of governing, regulating and guiding the conduct of business.

Section 4. The Central Council may charter or otherwise authorize and provide for the organization of subordinate groups or entities to perform governmental or proprietory functions of the Tlingit and Haida Indians of Alaska, and to delegate to such subordinate groups or entities such powers as shall enable the charter group or entities to function guided by the same limitations as the Central Council.

ARTICLE VI

OFFICERS AND EXECUTIVE COMMITTEE

Section 1. At its first regular meeting after each general election of delegates, the Central Council shall elect from its members the following officers: President, First Vice President, Second Vice President, Third Vice President, Fourth Vice President, Fifth Vice President, and Sixth Vice President, which officers shall serve until their successors are elected and qualified.

Section 2. Upon the death, resignation or removal of an officer, the Central Council shall elect one of its members to serve the remainder of the term.

Section 3. An executive officer who is charged in writing subscribed by not less than one-fourth of the delegates to the Central Council with neglect of duty or gross misconduct may be removed from office by vote of a majority of the delegates; provided, that before a vote on his removal may be taken, the executive officer concerned must have been supplied with the written statement of the charges against him at least ten days before the day of the meeting of the

Central Council at which the vote is taken and given a fair opportunity to be heard in answer to such charges. Other officers shall serve at the pleasure of the Central Council, and actions of the Central Council concerning the removal of officers shall be final.

Section 4. Officers of and delegates to the Central Council shall receive such compensation and allowances, if any, as shall be prescribed by the Central Council, subject to the availability of funds.

ARTICLE VII

FUNCTIONS OF OFFICERS

Section 1. The President of the Central Council shall be its chief executive officer and the chief executive officer of the general government of the Tlingit and Haida Indians of Alaska. He shall preside over all meetings of the Central Council and, subject to its direction, he shall conduct and manage the business of the general government, execute documents and otherwise act for and on behalf of the Central Council and the Tlingit and Haida Indians of Alaska, shall be an ex-officio member of all committees and commissions, and exercise such other powers as may be delegated to him. He may delegate authority to others to perform functions and exercise powers of his office, and appoint committees to assist the Central Council or the President in the performance of their functions. As a member of the Central Council, he is entitled to vote.

Section 2. The Vice Presidents of the Central Council shall assist the President when called upon to do so. In the order of their designation they shall succeed to the office of President upon the death, resignation or removal of the incumbent and serve in that office for the remainder of that term. In the absence of the President from a meeting of the Central Council the Vice Presidents shall preside in order of their designation.

Section 3. The President and the six Vice Presidents of the Central Council shall elect one of the Vice Presidents to act in the capacity of Secretary to the Central Council. It shall be the responsibility of the Secretary to see that an accurate record be kept of all action taken and of business conducted by the Central Council or its officers. He shall promptly transmit copies of all minutes of meetings and resolutions of the Central Council and its officers, to all local Tlingit and Haida Community Councils, and to any Tlingit or Haida upon request. Any other records of the Central Council shall be avaliable for inspection at the main office of the Council during business hours. The Secretary shall also attest the signature of the President or other authorized officer on legal documents executed for or on behalf of the Central Council as the general government of the Tlingit and Haida Indians of Alaska.

Section 4. The six Vice Presidents of the Central Council shall elect one of their members to act in the capacity of the Treasurer to the Central Council, who shall act in that capacity only to conduct ordinary Central Council business.

ARTICLE VIII

FUNCTIONS OF THE EXECUTIVE COMMITTEE

When the Central Council is not in session the Executive Committee whether assembled or not shall possess all of the powers of the Central Council and shall be able to do all things and take all actions which the Central Council could without limitation, except that the Executive Committee shall not have the power to take any action which would constitute a repudiation or negation of action taken by the Central Council at its last meeting. The Executive Committee shall act by a majority of its members.

ADOPTION AND AMENDMENT

Section 1. This constitution shall be in force and effect from the time of its adoption by vote of a majority of the delegates elected to the Central Council.

Section 2. Amendments to the constitution shall be submitted to delegates thirty days prior to the convention. A majority vote will be required to amend. If there is no prior notice, a two-thirds vote of delegates will be required.

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Chairman Abourezk. Thank you. Does that speak for the other Alaska witnesses?

Mr. Johnson. No.

STATEMENT OF ALFRED KETZLER, PRESIDENT, TANANA CHIEFS' CONFERENCE

Mr. Ketzler. It does pretty well for me. I do have certain things I would like to add. My name is Alfred Ketzler. I would like to speak on indirect costs for some of the problems that we have in contracts.

The indirect costs: We do contracts of about a total of $5 million a year and we have anywhere from 100 to 280 employees for any given time per year, depending on how many contracts we have or addendums to contracts that we receive.

As a cost reimbursable nonprofit corporation, we do not have working capital to carry administrative costs. Our actual administrative costs are presently running 50 percent above our provisional rate.

Upon being far enough into the year—fiscal year 1977—to fully ascertain our present operating costs, we filed for a new provisional rate based on this actual administrative budget.

If the special Indian contract support fund does not have the moneys necessary to cover our actual administrative costs retroactive to October 1, we will be bankrupt and no longer able to perform on the 1977 contracts.

Our rights to negotiate overhead rates is a whimsical right when viewed from the allocation for support of only $8.7 million versus the estimated need of $15 million.

We started negotiation on the new provisional rate based on actual determination of contracts and administrative costs early in March of this year. It is now June and we have not had a determination. This nonaction by the Federal agencies—in this case, HEW—has seriously affected our cash flow.

Letters of credit drawdowns are taking 15 to 20 days versus the 3-day turnaround time so widely publicized. Where there is no letter of credit—reimbursable costs, that is—moneys already spent on contracts are many times 60 to 90 days recovery.

The solution that we propose is that Congress appropriate adequate amounts of money for contract support to allow the tribes to achieve self-determination.

There also needs to be the development of a more definitive and standardized method of computing indirect costs.

The other thing I would like to speak on is personnel. The mandates to provide IPA assignments of civil service employees, especially BIA, to the administrative branches of government by the Congress through the passage of Public Law 93–638 need to be followed up so that they are indeed being followed.

In two instances, IPA assignments from Fairbanks agency staff to the Tanana Chiefs Conference were denied. In one instance, with much pressure, the decision to deny the IPA was changed. In the case involving the request for IPA assignment of the Fairbanks agency superintendent, an appeal was made to the Acting Commissioner of Indian Affairs.

After much doubletalk and search for reasons to deny on the part of the Juneau area director and the Acting Commissioner, an arbitrary decision based on conflict of interest was made. Apparently, in this instance the Bureau considers it a conflict of interest for one of its employees to work strenuously and judiciously in behalf of the Native self-determination.

These attitudes must be changed on the part of the Bureau so that the tribes might benefit to the extent intended by Congress.

Thank you very much.

[The prepared statement of Alfred Ketzler follows:]

MY NAME IS ALFRED KETZLER; I AM THE PRESIDENT OF THE TANANA CHIEF'S CONFERENCE. THE TANANA CHIEF'S CONFERENCE SERVES THE LARGEST OF THE TWELVE ALASKA REGIONS FORMED AS A RESULT OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. IT IS COMPRISED OF APPROXIMATELY 223,890 SQUARE MILES WHICH IS AN AREA LARGER THAN THE STATES OF WASHINGTON AND OREGON COMBINED. IN THIS REGION THERE ARE 43 VILLAGES WITH A TOTAL POPULATION OF APPROXIMATELY 12,000. ALTHOUGH THE AREA REPRESENTS A CROSS SECTION OF ALL NATIVE PEOPLES IN ALASKA, THE ATHABASCAN INDIANS ARE THE MOST PREDOMINATE GROUP.

THE TANANA CHIEF'S CONFERENCE (COMMONLY REFERRED TO AS TCC) HAS A CONTRACT WITH THE BUREAU OF INDIAN AFFAIRS UNDER THE PROVISIONS OF PUBLIC LAW 93-638 TO OPERATE ALL THE PROGRAMS FORMERLY OPERATED BY THE FAIRBANKS AGENCY OF BIA. INCLUDED IN THESE PROGRAMS UNDER CONTRACT ARE REALTY AND FORESTRY. TO THE BEST OF OUR KNOWLEDGE WE WERE THE FIRST TRIBAL ORGANIZATION TO HAVE A TOTAL AGENCY PACKAGE.

FROM OUR EXPERIENCE, WE HAVE ENCOUNTERED THE FOLLOWING PROBLEMS TO WHICH WE OFFER A SUGGESTION FOR SOLUTION:

1. DEFINITION OF A TRIBE - THE EXCLUSION OF TCC IN THE DEFINITION OF A TRIBAL GOVERNING BODY CAUSES CONTINUAL LOGISTIC PROBLEMS. FIRST OF ALL, TCC HISTORICALLY HAS BEEN THE SPOKESMAN FOR THE ATHABASCAN PEOPLE. SECONDLY, THE FEDERAL BUDGET

LIMITATIONS MAKE IT IMPOSSIBLE FOR EACH VILLAGE OR FOR EVEN A SUBSTANTIAL GROUP OF VILLAGES TO CHOOSE THE OPTION OF CONTRACTING TO PROVIDE BIA SERVICES THEMSELVES. THIRD, THE COST TO TCC TO HAVE TO JOURNEY TO EACH VILLAGE TO DISCUSS WITH THE VILLAGE COUNCILS AND SEEK FROM THEM THEIR PERMISSION THROUGH RESOLUTION TO CONTRACT, ALTER CONTRACTS, ETC. IS PROHIBITIVE. AT BEST THE JOURNEYS ARE "FLY-BY" TRIPS THAT RESULT IN HASTY AND SCANTY DISCUSSION AS WELL AS INADEQUATE DECISION-MAKING TIME FOR ALL PARTIES CONCERNED. THE RESULT IS THE DEVELOPMENT OF MISTRUST, ANTAGONISM AND FEAR BETWEEN THE VILLAGES AND TCC.

WHEN WE FIRST SOUGHT THE CONTRACT UNDER "638" IT COST US OVER $25,000 TO OBTAIN THE NECESSARY RESOLUTIONS. AS WE GAIN EXPERIENCE, WE ARE BEGINNING TO REALIZE THE NEED FOR AND WISH TO IMPLEMENT CHANGES IN THE WAY THE CONTRACTED PROGRAMS ARE OPERATED. DEPENDING ON THE INTERPRETATION BY OUR AREA OFFICE, THIS MEANS THAT WE WOULD HAVE TO EXPEND TWENTY-FIVE THOUSAND DOLLARS PLUS EACH TIME WE WANTED TO EXERCISE OUR "SELF-DETERMINATION" BY CHANGING BIA PROGRAMS TO MEET OUR NEEDS. THIS KIND OF "SELF-DETERMINATION" WE CANNOT AFFORD.

THE OBVIOUS SOLUTION IS TO DEVELOP LEGISLATION THAT IS SPECIFICALLY DESIGNED TO MEET THE "UNIQUE-

NESS" OF ALASKA. TCC NEEDS TO BE RECOGNIZED AS THE TRIBAL GOVERNING BODY THAT IT IS. (OH, INCIDENTALLY, WE OFTEN WONDER WHY THE "UNIQUENESS" OF ALASKA IS OFTEN CONSIDERED ONLY AFTER NUMEROUS PROBLEMS ARISE AND NOT IN THE DEVELOPMENTAL STAGE OF LEGISLATION AND POLICY DEVELOPMENT WHERE PROBLEMS MIGHT BE ANTICIPATED AND PREVENTED.

2. INDIRECT COSTS RATES, INDIAN CONTRACT SUPPORT FUNDS, OVERHEAD NEGOTIATION PROCEDURES, AND PAYMENT PROCEDURES.

AS A COST REIMBURSABLE NON-PROFIT CORPORATION WE DO NOT HAVE WORKING CAPITAL TO CARRY ADMINISTRATIVE COSTS. OUR ACTUAL ADMINISTRATIVE COSTS ARE PRESENTLY RUNNING 50 PERCENT ABOVE OUR PROVISIONAL RATE. UPON BEING FAR ENOUGH INTO THE YEAR (FISCAL YEAR 1977) TO FULLY ASCERTAIN OUR PRESENT OPERATING COSTS WE FILED FOR A NEW PROVISIONAL RATE BASED ON THIS ACTUAL ADMINISTRATIVE BUDGET. IF THE SPECIAL INDIAN CONTRACT SUPPORT FUND DOES NOT HAVE THE MONIES NECESSARY TO COVER OUR ACTUAL ADMINISTRATIVE COSTS RETROACTIVE TO OCTOBER 1ST WE WILL BE BANKRUPT AND NO LONGER ABLE TO PERFORM ON THE 1977 CONTRACTS. OUR RIGHTS TO NEGOTIATE OVERHEAD RATES IS A WHIMSICAL RIGHT WHEN VIEWED FROM THE ALLOCATION FOR SUPPORT OF ONLY 8.7 MILLION VERSUS THE ESTIMATED NEED OF 15 MILLION.

WE STARTED NEGOTIATION ON THE NEW PROVISIONAL RATE BASED ON ACTUAL DETERMINATION OF CONTRACTS AND ADMINISTRATIVE COSTS EARLY IN MARCH OF THIS YEAR. IT IS NOW JUNE AND WE HAVE NOT HAD A DETERMINATION. THIS NON-ACTION BY THE FEDERAL AGENCIES (IN THIS CASE, HEW) HAS SERIOUSLY AFFECTED OUR CASH FLOW.

LETTER OF CREDIT DRAWDOWNS ARE TAKING 15-20 DAYS VERSUS THE THREE DAY TURN-AROUND TIME SO WIDELY PUBLICIZED. WHERE THERE IS NO LETTER OF CREDIT, REIMBURSABLE COSTS (MONIES ALREADY SPENT ON CONTRACTS) ARE MANY TIMES 60-90 DAYS RECOVERY.

THE SOLUTION THAT WE PROPOSE IS THAT CONGRESS APPROPRIATE ADEQUATE AMOUNTS OF MONEY FOR CONTRACT SUPPORT TO ALLOW THE TRIBES TO ACHIEVE SELF-DETERMINATION. THERE ALSO NEEDS TO BE THE DEVELOPMENT OF A MORE DEFINITIVE AND STANDARDIZED METHOD OF COMPUTING INDIRECT COSTS. THERE ALSO NEEDS TO BE MORE COOPERATION BETWEEN THE BIA, INTERIOR DEPARTMENT AUDIT AND INVESTIGATION, HEW, AND, FOR THAT MATTER, ALL FEDERAL AGENCIES WHO ARE INVOLVED WITH THE FUNDING OF INDIAN PROGRAMS SO THAT INDIRECT COSTS MAY BE SUFFICIENT TO ALLOW CONTRACTORS TO FUNCTION PROPERLY. IN SOME INSTANCES, TRIBES ARE FORCED TO MAKE A CHOICE BETWEEN ACCEPTING A CONTRACT THAT PROVIDES VALUABLE NEEDED SERVICES TO

ITS PEOPLE BUT BANKRUPTS THE ORGANIZATION THAT CONTRACTS FOR IT OR PASSING UP THAT VALUABLE SERVICE TO ITS PEOPLE IN LIEU OF MAINTAINING SOME TYPE OF FISCAL INTEGRITY. EITHER WAY THIS IS A VERY BAD CHOICE.

THERE ARE INSTITUTIONS IN OTHER SEGMENTS OF FEDERAL CONTRACTING SUCH AS COLLEGES, WHO ARE ABLE TO OBTAIN INDIRECT COSTS RATES TWO AND THREE TIMES HIGHER THAN OURS.

3. COST DIFFERENCE

THE FACT THAT THE DOLLAR IN ALASKA BUYS A LOT LESS THAN THE DOLLAR IN THE LOWER FORTY-EIGHT NEEDS STRONG CONSIDERATION IN FUNDING ALLOWANCES, INDIRECT COST RATES, ETC. THE COSTS OF DOING BUSINESS IN THE VILLAGES IS AT LEAST 50% HIGHER BECAUSE OF THE TRANSPORTATION COSTS. LABOR COSTS ARE NECESSARILY MUCH HIGHER BECAUSE OF THE HIGH LIVING EXPENSE. ESTIMATES OF THE INCREASED COST OF LIVING IN FAIRBANKS RANGE FROM 28% HIGHER THAN WASHINGTON, D. C. TO 45% HIGHER THAN SEATTLE, WASHINGTON. AGAIN, THE COSTS IN THE VILLAGES FAR EXCEED THE COSTS IN FAIRBANKS.

THE SOLUTION IS FOR THE OFFICE OF MANAGEMENT AND BUDGET AND THE CONGRESS TO CONSIDER THESE COST

INCREASES WHEN BUDGETING FOR ALASKA. OUR PEOPLE IN THE VILLAGE WITH THE EXCEPTION OF ABOUT SIX VILLAGES CAN ONLY BE REACHED BY AIRPLANE. STAFF TRAVEL COSTS ARE CONSEQUENTLY VERY HIGH. A $10,000 TRAVEL BUDGET FOR ONE SPECIALIST TO PROVIDE MINIMUM NEEDED SERVICES IN THE REGION IS BARELY ADEQUATE. THESE FACTORS SHOULD ALSO BE CONSIDERED BY THOSE WHO PREPARE THE BUDGET. WE ARE NOT ASKING FOR PREFERENTIAL TREATMENT; WE ARE ONLY REQUESTING OUR FAIR SHARE OF BUDGET CONSIDERATION SO THAT WE MIGHT PROVIDE BADLY NEEDED SERVICES.

4. PERSONNEL - THE MANDATES TO PROVIDE IPA ASSIGNMENTS OF CIVIL SERVICE EMPLOYEES, ESPECIALLY BIA, TO THE ADMINISTRATIVE BRANCHES OF GOVERNMENT BY THE CONGRESS THROUGH THE PASSAGE OF P.L. 93-638 NEED TO BE FOLLOWED UP SO THAT THEY ARE INDEED BEING FOLLOWED.

   IN TWO INSTANCES, IPA ASSIGNMENTS FROM FAIRBANKS AGENCY STAFF TO THE TANANA CHIEFS CONFERENCE WERE DENIED. IN ONE INSTANCE, WITH MUCH PRESSURE, THE DECISION TO DENY THE IPA WAS CHANGED. IN THE CASE INVOLVING THE REQUEST FOR IPA ASSIGNMENT OF THE FAIRBANKS AGENCY SUPERINTENDENT, AN APPEAL WAS MADE TO THE ACTING COMMISSIONER OF INDIAN AFFAIRS. AFTER MUCH DOUBLE TALK AND SEARCH FOR REASONS TO DENY ON THE PART OF THE JUNEAU AREA DIRECTOR AND

THE ACTING COMMISSIONER. AN ARBITRARY DECISION BASED ON "CONFLICT OF INTEREST" WAS MADE. APPARENTLY, IN THIS INSTANCE, THE BUREAU CONSIDERS IT A CONFLICT OF INTEREST FOR ONE OF ITS EMPLOYEES TO WORK STRENUOUSLY AND JUDICIOUSLY IN BEHALF OF NATIVE SELF-DETERMINATION.

THESE ATTITUDES MUST BE CHANGED ON THE PART OF THE BUREAU SO THAT THE TRIBES MIGHT BENEFIT TO THE EXTENT INTENDED BY CONGRESS.

Chairman ABOUREZK. Thank you very much.

STATEMENT OF CHARLES JOHNSON, EXECUTIVE VICE PRESIDENT, KAWERAK, INC., BERING STRAITS NATIVE ASSOCIATION

Mr. CHARLES JOHNSON. Mr. Chairman, my name is Charles Johnson. I am the executive vice president of Kawerak, which is the service delivery arm of the Bering Straits Native Association. I am an Inupiaq Eskimo from White Mountain, Alaska. I have two statements I have submitted. One is from Caleb Pungowiyi, who is our president.

I would like to highlight that and I would like to highlight my own testimony which I have also submitted.

The testimony of Caleb Pungowiyi relates primarily to our structure which is the Bering Straits Native Association. We have 19 villages which have voted to join in a tribal federation and in their voting to join, they have ceded some of their rights to the federation. But, at the same time, the federation recognizes the rights of the villages for local matters.

However, we have not yet received recognition from the Bureau on this association. We have made provisions to include all of the Eskimo people of our area, including the Eskimos of Big Diomede and Siberia, although we are not sure that they would choose to leave that system and come under the BIA. [Laughter.]

Chairman ABOUREZK. You may not be able to tell the difference. [Laughter.]

Mr. CHARLES JOHNSON. Our region is 25,000 square miles and we comprise 85 percent of the population. Yet we are not in control of our economy. We are not in control of our political structures, our education, and we are continually under pressure from the BIA, the cash economy, and the political structure to leave our traditional way of life and join the dominant society.

Our federation and Kawerak, which is our service arm, is in constant struggle to justify our existence, and we are wondering why this must be so if there is such a thing as self-determination.

We have a Self-Determination Act that looks like it is intended to allow us to determine our own course, but the joke is on us because it won't work unless changes are made that takes away the arbitrary choices of the BIA.

The act gives the BIA more power than it had before.

On my own testimony, I would like to address a couple of changes that we would like to see.

First, we feel that the basic weakness of the Self-Determination Act is that it allows the Secretary of Interior, the BIA, and HEW to make arbitrary choices as to the intent of the act.

For Alaska, this first problem is our tribal status. We feel that although the tribes or the villages, as the BIA calls tribes, have formed a tribal federation in the Bering Straits Native Association, yet we are not recognized.

We are taking steps to have this done but the BIA demands unanimous consent. Now, by demanding unanimous consent, the BIA plays upon our differences and, as I stated before, we feel our differences of opinion are really a strength which allows us to look at all sides of an issue. But by demanding unanimous consent, the BIA then puts itself in a place to where it, the BIA, is the final determiner of our tribal status.

In our region, as few as 25 people out of over 6,000 can block any contracting or any recognition by the BIA. This is because of their unanimous consent thing.

Now, in the Alaska Land Claims Act, which Public Law 93–638 uses the tribal definition for Alaska, it identifies the profit corporations.

Now, we feel that the nonprofit corporations or the associations such as ours are the only vehicle through which we can achieve self-determination because our future is not guaranteed by participation in the profitmaking corporation that will soon be open to the general public. So we feel that, first of all, for Alaska, the regional associations must determine who the tribal authority is. The way that it is handled now, we feel that, as mentioned before, the law should be changed in its name because of the implementation. We feel it should be called the BIA Self-Perpetuation Act because this is exactly what is happening.

Second, we feel that in order for the act to work, we, the tribal authorities, must be able to determine the priorities for the BIA and programs and budgets. This can be done under the present structure, if we can get signoff authority on the area and regional budgets and program.

As it it now, we are doing to our people what the BIA has been doing to us from the time since it started. We have no choice of what programs we are going to carry out.

Third, we feel that the section which allows the Secretary of Interior and BIA and HEW, to make a choice on contract payment, either cost reimbursable or grants payment contract should be amended to take out the cost reimbursable section because, as the prior testimony has indicated, that provision gives the BIA complete control of our activity.

We feel that changing that provision will do more to guarantee the success of programs carried out by the tribes than any single thing, because we cannot live with cost reimbursables.

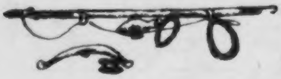
In our area, we are subsidizing Federal programs by as much as 5 to 10 percent. So these, we feel, must be the changes that are to be made, these are primarily to take away the arbitrary powers over us. That is, that the BIA has and change that because the intent of the act really is self-determination, we feel. As it is now, there is no self-determination.

Thank you.

Chairman Abourezk. Thank you very much.

[The written statements of Caleb Pungowiyi, president, Bering Straits Native Association and Kawerak, Inc., and Charles Johnson, executive vice president, Kawerak, Inc., follow:]

KAWERAK, INC.
BERING STRAITS NATIVE ASSOCIATION



STATEMENT OF
CALEB PUNGOWIYI, PRESIDENT
BERING STRAITS NATIVE ASSOCIATION AND KAWERAK, INC.
TO
SELECT SENATE SUBCOMMITTEE ON INDIAN AFFAIRS

Mr. Chairman. I am Caleb Pungowiyi, originally from Savoonga on St. Lawrence Island, now living in Nome. I am president of the Bering Straits Native Association and Kawerak, Inc., the service delivery arm.

In June of 1976, the Bering Straits Native Association reorganized itself so that it could become the tribal federation for our region. This we did to unite our people so that we could protect our rights and powers under the law. The tribal federation is also a vehicle to provide the services to meet the needs of the people.

In our Articles of Association, the federation recognizes the rights of the villages to contract local programs and the villages cedes some of its sovereignty to the federation as long as it is a member.

We have made provisions to include all Native peoples of our region and have left the door open for the Eskimos of Big Diomede and Siberia to become part of our federation. not sure they would leave that system for the BIA.

Our region is 25,000 square miles, 85% of the total population is Eskimo. With that large a plurality it would seem that we could control the politics, the economy, the education of our children and our destiny. Yet that is not true. We are under the control of the merchants, the BIA and the education system that is imposed upon us. We are under continuing pressure to conform to the life styles of the non-natives by the BIA, the school systems, the state and the cash economy.

Our federation and Kawerak are in a constant struggle justifying our existence to the powers that be. Why must this be so if there is such a thing as self determination.

The self determination act identifies profit corporations as tribal units eligible to contract. Yet control of our future cannot be assured by holding stock in a profit corporation that will soon be open to the general public. Our tribal federation is the only way open to us to get involved in the processes necessary to control our future.

Now we have a "Self Determination Act" that looks like it is intended to allow us to determine our own course. But the joke is on us because it won't work unless changes are made that takes the arbitrary choices away from the BIA. The Act gives the BIA more power than it had before.

We must be able to determine who our tribe is and what our priorities are. The tribes should be able to determine what the priorities of the BIA will be. Only then will we have self determination.

Caleb Pungowiyi

KAWERAK, INC.
BERING STRAITS NATIVE ASSOCIATION

STATEMENT OF CHARLES JOHNSON,
EXECUTIVE VICE PRESIDENT
KAWERAK, INC.
TO
SELECT SENATE SUBCOMMITTEE OF INDIAN AFFAIRS

Mr. Chairman and members of the Subcommittee, my name is Charles Johnson. I am Inupiaq Eskimo. My position is Executive Vice President of Kawerak, Inc., which is the service delivery arm of our tribal federation, the Bering Straits Native Association in Nome.

This tribal federation has been recognized by the villages of our region by their acceptance of the Articles of Association and the Bylaws and by their election of a representative to the association. However, we have not as yet been recognized by the Bureau of Indian Affairs. We are awaiting information from the Area Director in Juneau as to the process for receiving this recognition.

This recognition if it is forthcoming under the present rules and regulations for PL 93-638 published by the B.I.A. will be tenuous at best and fragile in that it can be shattered by the withdrawal of one village from the association. Given the politics of human interaction there will always be disagreement on important questions facing our people. This is not a weakness but a strength since all sides of a question must be considered. However the rules and regulation promulgated allows the B.I.A. to be the final decision maker on our tribal status whether or not a majority of the population desires a regional tribe.

The intent of congress is most admirable for its attempt at providing some "self determination" for Indian and Alaska Native people. The irony of the situation is that our "self determination" is restricted by PL 93-638 because of its basic weakness of allowing the B.I.A. and H.E.W. the latitude of making determinations as to the intent of the law. The Rules and Regulations written by these agencies only serve the bereaucratic purpose of extending their control over activities. The implementation of PL 93-638 thru the rules and regulations of the B.I.A. might be cause to change the name to the "B.I.A. Self - Perpetuation Act".

We have a long awaited and much heralded piece of legislation raising the hopes and expectations of Native peoples only to have it develop into a yoke around our necks. Yet this law can be of benefit to us if changes are made which will allow us, rather than the B.I,A., to self determine our course.

The first of these changes must be that we take away from the B.I.A. the arbitrary power to determine who is and who isn't a tribe. Not only should the Alaska regional non profits be included in the definition of tribes in Section 4 of the Act but the choice of which tribe to contract with on regional programs must be taken away from the B.I.A. – [illegible] Alaska tribes.

Our tribal federation, the Bering Straits Native Association, recognizes the rights of the village to contract for local programs, and the villages by joining the federation cedes the right to the association to contract for regional programs. This is a matter of choice, of "self determination" but that choice has not been recognized by the B.I.A.

This choice has obviously been made in each of the 12 regions but we need a change in law to make that choice official.

That change should give all the rights of tribes to the regional associations for contracting regional programs while still recognizing village rights for local programs as defined by the regional association.

Secondly to make self determination work we, not the B.I.A., should be able to establish priorities within each of our regions. As it is now we are doing unto our people what the B.I.A. has been doing unto us. The B.I.A. determines what services are to be delivered regardless of the needs indentified by the Native people of our region. Last year a survey of 465 village parents identified bilingual education as a high priority for village schools yet this was dismissed by the agency superintendent since it was not identified as a priority by the B.I.A. — our supt looking to retirement.

In January of 1977 we submitted an application to the B.I.A. to study our agency programs and expenditures to prepare our villages and our region for contracting B.I.A. services. After six months of discussions, planning, gathering of resolutions, and assurances that our study could be funded by reprogramming agency funds, our application was submitted. We were then turned down because according to the agency - our resolutions did not cover every village. When we then agreed to do the contract only for those villages with resolutions we were told that funds could not be reprogrammed unless first approved by the area director and the commissioner of the B.I.A. We were then told that it was not a proper application under PL 93-638 and that it should come under technical assistance from the area office. But the area office stated that technical assistance was not available to tribal organizations. So here we sit still wondering if we can ever "self determine" our own priorities. — B

This problem can be solved on a regional basis by giving program and budget sign off to the tribal authority that is being served. not just advice The Area office budget can be signed off by the Human Resource Committee of AFN. Giving the tribes sign off authority can well be accomplished within the present system of Band analysis. But the system will have to be amended to allow changes in programs and budget to meet the needs as they arise.

The intent of Public Law 93-638 can then be met by giving the tribes sign off authority into program and budgeting and by building in flexibility. This may slow up the process some but that is the price of self determination and we are willing to pay it.

Thirdly an amendment must be made to Section 106.(b) of the Act taking away the choice of the B.I.A. now using cost reimburseable or advance contracts. For give a choice the ~~B.I.A.~~ they will place us under cost reimbursable contract.

There is not one tribe or tribal organization that can survive on cost reimbursable contracts without support from some other source. Yet when we falter or use inovative practices to make contracts work the screws are tightened and costs are disallowed. The process of reimbursement puts us completely under the thumb of the B.I.A. A change from cost reimbursable to advance payment contracts would do more for the success of contracts than any other single action.

In short the only way that self determination will work will be to take the choices on critical questions such as tribal status, programs and budgets, and method of payments for these programs away from the B.I.A. and give these to the Native people. Then the high ideals of congress and the people will be served. The Bureau of Indian Affairs and H.E.W. should be servants of the people rather than our masters. This I believe to be the intent of congress but unless changes are made the act restricts our chances of self determination.

Thank you,

Chairman **Abourezk**. This brings to an end the testimony for today. I want to express my thanks to all of the witnesses who appeared, and a special thanks to the committee of the National Congress of American Indians—Chuck Trimble, and Mel Tonaskett—for inviting us here during the convention to hold hearings. Also a special thanks to the All-Indian Pueblo Council represented here by Frank Tenorio for their great hospitalities since they are acting as hosts for the meeting, and to the audience for their participation as well.

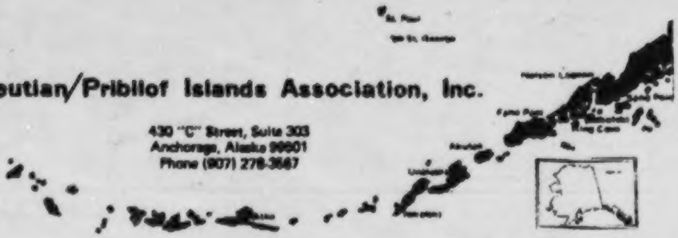
For now, the hearings are adjourned. [Applause.]

[Whereupon, at 1:35 p.m., the oversight hearings on Public Law 93-638, was adjourned.]

[The following material was submitted for the record:]

Aleutian/Pribilof Islands Association, Inc.

430 "C" Street, Suite 303
Anchorage, Alaska 99501
Phone (907) 276-3687



June 21, 1977

The Honorable Senator Stevens
U.S. Senator for Alaska
260 Old Senate Office Building
Washington, D.C. 20510

Dear Senator Stevens:

Thank you for notifying us of the oversight hearings on the Indian Self-Determination Act on June 24, 1977 in Albuquerque. Basically, there are two aspects of the Act that we would like to see changed and/or clarified:

I. Required Resolutions

The Act as well as the implementing regulations require Native Regional Non-Profit organizations such as ours to obtain a resolution from each village naming our organization as eligible for grants and/or contracts for each proposal.

It is our understanding that the grant program was designed to strengthen the tribes so that they may be able to contract out the Federal programs themselves. Most of our villages are so small that they would probably never be large enough to contract out any programs. (You are aware that six Regional Corporations are presently being served by the Anchorage Agency of the BIA). Yet, Native Regional Non-Profit Organizations such as ours must expend a great deal of time and money in obtaining these resolutions from our villages. (For example, the village of Atka is approximately 2,000 miles west of Anchorage and can only be reached by air charter which costs around $2,500 from Unalaska.

We believe that the intent of Self-Determination can be better served by allowing Native Regional Non-Profit groups like ourselves to apply for grants and contracts with a single resolution from our Board which has representation from each village in our region.

II. Federal Programs other than HEW and BIA

The Preamble and Declaration of Policy of Public Law 93-638 (Indian Self-Determination and Educational assistance Act of January 4, 1975) states that it was the Congressional intent of this Act "...to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians...". The following Titles of the Act, however, appear to apply the concept of Indian Self-Determination only to HEW and the Department of Interior.

Sections 102 and 103 of the Act states that the Secretaries of HEW and Interior "...are directed to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs or portions thereof, provided for the Act of April 16, 1934 (Stat. 596), as amended by this Act; any other program or portion thereof, which the Secretary of Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921, (42 Stat. 208), and any Act subsequent thereto:...".

The question in our minds is can Indian Tribal groups contract for Federal programs other than HEW and Interior since the previous Acts cited authorized the Department of Interior to provide birth to death services, some of which have now been transferred to other Federal Departments? (e.g. Department of Agriculture, Department of Labor, HUD, etc.) There are numerous other Federal agencies that serve Indians living on or near reservations at the present time. We would like the opportunity to contract out those programs and services because we believe that we can do a better job.

We would appreciate it if you would assist us in having our position made known to the Oversight Hearings on the Indian Self-Determination Act on June 24, 1977 in Albequerque.

Thank you.

Sincerely,

Patrick Pletnikoff
Executive Director

cc: Senator Steven's Anchorage Office

Apache Tribe of Oklahoma
P.O. Box 879
Anadarko, Oklahoma 73005

May 27, 1977

REC'D JUN

Dear Sir:

I am writing this letter as a last resort, since I firmly believe that we have exhausted all efforts to deal with the Bureau of Indians Affairs, Anadarko Area office and Agency.

At present there is an Apache Tribal P.L. 93-638 proposal approved by the Bureau of Indian Affairs Area Director, however this proposal, although approved, will not be honored by the Bureau of Indian Affairs in both the Area office and the Agency level.

The proposal has been approved by Resolution form on the Tribal level by a quorum of the Apache Business Committee. In accordance with the Apache Tribal Constitution only a majority vote of the Apache Business Committee at which a quorum is present will suffice.

The problem begin when the parties who voted against the Resolution went to the Bureau of Indian Affairs and begin to ask favors of Bureau employees. It has become obvious that any negotiations on the behalf of the majority of the Apache Business Committee are fruitless. We have met with Bureau represenatives on both levels and are currently given one excuse than another, See attached memos.

There have been two petitions given to the Apache Tribal Chairman to call a General Council meeting, and there is currently another General Council meeting scheduled for the 4th day of June, 1977. However, at the first meetings the petitioner did not get a quorum of over fifty (50) tribal members present and the meeting was dissolved. The second petition did not have the required member of enrolled Apache tribal members (50).

Now the Bureau will not honor the P.L. 93-638 proposal until after the June 4th meeting. If the petitioners do not get a quorum at that meeting, do we wait until the Politicians in the Bureau of Indian Affairs are completely satisfied that their favorites are finally defeated.

If that is so why does the Bureau offer a P.L. 93-638 grant for Indian Self-Determination if the Bureaus own politicians are allowed to determine what is to happen to a tribe.

We firmly believe that action will be forth coming and we will be dealt with by the Bureau of Indian Affairs for our writing this letter. However, if we are to continue to deal in good faith with the Bureau we will have to determine in what capacity we will exist in and the sooner we know the better off we will be. If there is to be self-determination are we not allowed to make our own mistakes and to settle our own tribal politics among our Apache people.

We are not saying that we do not need the Bureau of Indian Affairs. For it can be surely proven that we do. But what we do need from them is the training and technical assistance that is offered for the programs. But when the Bureau begins to play Apache against Apache, we have to wonder where is this written into our Tribal Constitution.

As stated in the beginning, this letter is only as a last resort since our hands are tied until either the Bureau stays out of tribal politics or the petitioners get a majority of the Apache people to vote their way.

We have written and re-written the proposal for P.L. 93-638. We do know for a fact that other tribes have turned in proposal not nearly written as well as ours and the other tribes have been approved. We do not wish to bring in to this mess any other tribe but if you or your agent could request from the Anadarko Area office or Anadarko Agency a copy of each proposal for P.L. 93-638 you would see for your self. We understand BIA policy but do not quite understand why only certain rules apply to us, and us alone.

Respectfully,

Chairman - Apache Tribe of Oklahoma

Committee Member - Apache Tribe

William B. Klinekole Sr
Committee Member - Apache Tribe

cc: Anadarko Area Director
Anadarko Agency Superintendent

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ANADARKO AREA OFFICE
P. O. Box 368
Anadarko, Oklahoma 73005

IN REPLY REFER TO:
Program Development
P. L. 93-638

MAY 5 1977

Memorandum

To: Area Director

From: Area Self-Determination Coordinator

Subject: Apache Tribe of Oklahoma Request for Approval of Grant Application for FY - 1977

Transmitted herewith is the Grant Assistance application for the Apache Tribe of Oklahoma for FY - 1977 received from the Superintendent, Anadarko Agency on May 4, 1977. The application has been reviewed for conformance to the guidelines and regulations under P. L. 93-638. Your approval is requested.

J. William
Acting Area Coordinator

Attachment:

APPROVED:
Area Director
5/16/77
Date

RECEIVED
MAY 12 1977
ONAP Office
Apache Tribes of Oklahoma

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ANADARKO AREA OFFICE
P. O. Box 368
Anadarko, Oklahoma 73005

IN REPLY REFER TO:
Program Development
Contract Services

MAY 13 1977

Memorandum

To: Chief, Division of Program Development & Budget
Attention: Aaron Dry

From: Area Contract Specialist

Subject: Application BOOG14207022, Grantee-Apache Tribe of Oklahoma, dated 5-1-77, FY-77

The attached application has been received and the immediate conclusion is the program narrative is incomplete because:

1. The narrative appears vague as to how performance of the stated activities relates to the authorized programs described in 25 CFR 272.12. More specific language on how the activities relate to the authorized programs would facilitate evaluations.

2. The narrative alludes to the possibility that this application is a continuation of their FY-76 grant. Assuming that the application is a continuation of FY-76 grant, the FY-77 program budget extends over FY-76 program budget for the period 5-1-77 through 8-31-77 without specific mention of any activities overlap. Possible alternatives would be, either state in what areas of FY-76/77 activities and program budget overlap or terminate the FY-76 program as of 4-30-77 and carry-over the savings to the FY-77 grant.

3. The narrative states a professional staff will be hired but is not specific as to what the performance would be. The narrative addresses the performance of only the tribal administration in general terms. Descriptive language will clarify how the professional staff (Tribal Administrator, Assistant, Bookkeeper) will strengthen or improve tribal government and how this particular staff will facilitate overall administration of tribal progress.

As written, the FY-77 grant application narrative prevents a comparison of actual accomplishments to the goals established for the period or a segment of a long range plan.

G William Price
Area Contract Specialist

Program & Budget
Contract Services

MAY 17 1977

Mr. Alfred Chalepah, Sr., Chairman
Apache Tribe of Oklahoma
P. O. Box 879
Anadarko, Oklahoma 73005

Dear Mr. Chalepah:

We acknowledge receipt of Grantee's document listed below:

1. Amendment request to extend the grant termination date from 11/30/76 to 8/20/77.

The above mentioned item is in compliance with the requirements of Grant B00G14206025, dated 9/1/76; accordingly, we accept same in accordance with the terms and provisions of said grant.

November 30, 1976, was the end of the grant; therefore, before an amendment of the nature requested can be consummated, the reports listed below are due and deliverable to the Grant Officer's Representative:

1. Financial status report for the period 9/1/76 through 11/30/76, ok
2. Program performance report for the period 9/1/76 through 11/30/76, ok
3. Report of Expenditures (Request for Reimbursement form) for the period 9/1/76 through 11/30/76, ok
4. Tribal authorization to amend the requested termination date of 8/20/77 to 8/31/77. The 8/31/77 terminate date will enhance grant administration. ok [illegible]
5. A revised Part III Budget Data and Budget Data Detail which reflects a line item for "audit expense".
6. The resolution is silent as to the status of the Bookkeeper as an elected tribal official, so if the bookkeeper is an elected tribal official, a resolution requesting that the official be hired through this grant shall have prior approval of the Area Director. ok

Your attention to the above mentioned, at your earliest convenience, will be appreciated.

Sincerely yours,

(sgd) Stanley Speaks

Area Director

Attachments

cc: w/attachments
Superintendent, Anadarko Agency, Attn: T. Bruner
AAO, P. L. 93-638 Coordinator
AAO, Chief, Division of Indian Services
Contract & Grant Administrative Staff, Code 660, Attn: Dale Heald,
1951 Constitution Ave., N.W., Washington, D. C.

BPino:bf 5/12/77

Association on American Indian Affairs, Inc.

Office of General Counsel
600 New Hampshire Avenue, N.W.
Washington, D. C. 20037
Telephone: 965-9400

Arthur Lazarus, Jr.
Richard Schifter
General Counsel

Oliver La Farge, *President*
(1932-1963)

Alfonso Ortiz, Ph.D., *President*
Benjamin C. O'Sullivan, *Vice President*
Mrs. Henry S. Forbes, *Secretary*
Mrs. Alden Stevens, *Treasurer*
William Byler, *Executive Director*
Arthur Lazarus, Jr., Richard Schifter, *General Counsel*

May 31, 1977

MEMORANDUM

Oversight Hearings on Public Law 93-638

We have identified some problems which have emerged during the 1976 and 1977 fiscal years in the implementation of Public Law 93-638 in connection with the Association's assistance to tribes in contracting BIA programs.

1. Overhead Rates and Indian Contract Support Funds. Tribal organizations have been encouraged to contract for the operation of BIA programs in the expectation of receiving funding for administrative costs over and above program funds. In FY 1976 and FY 1977 Congress has appropriated a special Indian Contract Support Fund to cover these "costs of contracting"(costs such as accounting services, insurance, etc., which BIA programs do not normally include).

However, the Indian Contract support fund for F.Y. 1977 of $9.7 million has been expended and there are many tribal contractors who have the right to negotiate overhead rates but for which no F.Y. 1977 funds are currently available.

Unless Congress acts promptly to restore this fund, a serious breach of faith will result with respect to tribes which have accepted the Congressional invitation to contract Bureau programs. The Bureau estimates the Indian Contract Support need for F.Y. 1977 as $15,000,000 but the House Appropriations Subcommittee has approved only $8.7 million for F.Y. 1978. Indian contract support on the basis of negotiated rates approved by the Department of the Interior's Office of Audit and Investigations should be recognized as a continuing responsibility to be funded by the Congress as needed.

2. Overhead Negotiation Procedures. Some tribal organizations have encountered difficulties in connection with contract budgets due to the complexities of dealing with BIA Area Offices on direct cost budgets and Interior OAI regional offices on overhead budgets. In addition, varying interpretations are given to tribes by BIA, OAI, and among BIA Area Offices. One BIA Area Office, for example, has maintained that Indian Contract Support funds are only available for contracts with tribal governing bodies, although Central Office procedural guidelines (as well as the practice in other Areas) make clear that any organization qualifying as a "tribal organization" under Public Law 93-638 may qualify.

3. Payment Procedures. BIA Finance offices have caused problems for smaller tribal organizations by demanding documentation in support of vouchers which go far beyond contract requirements. In one instance (Borrego Pass School) a school's capacity to operate has been severely inhibited by a unilateral modification of its letter of credit effected by BIA Finance without any consultation with the appropriate BIA Contracting Officer.

4. BIA Disregard of Procedures and Contract Provisions. While the Bureau has conducted extensive training sessions to acquaint its employees with Public Law 93-638, many instances of BIA violations of the regulations under P.L. 93-638 or of provisions of BIA contracts occur. In one instance a BIA superintendent cleared a contract and told the tribe to commence performance although the Area Director had not yet determined that no ground for refusing to contract existed. BIA Facilities Management staff have repeatedly ignored contract requirements relating to maintenance and repairs of contract schools, leading in one instance to a contract dispute decided in favor of the contractor by the BIA Contracting Officer.

May 31, 1977

5. BIA Declination Procedures Relating to Budget. The BIA regulations require that a tribe is entitled to at least the funding which would have been available to the Bureau for a contract program. Tribes have had great difficulty in obtaining information on this amount from BIA officials although they are clearly entitled to such information under the regulations. Sometimes the figure initially provided varies substantially from the amount revealed by further BIA study.

The Bureau is circulating proposed changes in its regulations which would allow it to decline a contract because of inadequate funding but avoid the detailed procedures on appeal (which place the burden of proving that a justification for declining the contract exists on the Bureau and require a hearing at the Departmental level). This proposed change would create a very significant loophole in the procedural safeguards which the Bureau's regulations have established to protect tribal rights under Public Law 93-638.

6. Personnel. In some instances the Bureau has not cooperated with tribes to assure the full usefulness of the right to have the assistance of Federal employees in tribal programs.

In particular, the Bureau has established a policy of refusing to assign an agency superintendent to work with a tribe on a temporary basis under the Intergovernmental Personnel Act where most agency programs have been contracted to the tribe. The Bureau gave several distinct and conflicting reasons for applying this policy in the case of the request of the Tanana Chiefs Conference for assignment of the Fairbanks Agency Superintendent but settled finally on the argument that such an assignment would create an apparent conflict of interest.

In view of the unique objectives of contracts under Public Law 93-638 the Bureau's position on this matter makes no sense whatever and is open to the explanation that the Bureau is simply trying to make contracting more difficult by vetoing a procedure which has obvious advantages in terms of easing the transition from Federal to tribal operation of a large Bureau program.

There is also some indication that BIA Personnel has not moved very enthusiastically to acquaint BIA employees of their right to retain Federal employment benefits on accepting tribal employment.

RECEI_D JAN 1 3 1977

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. ~~20242~~ 20245

IN REPLY REFER TO:
Personnel Management

JAN 10 1977

Mr. Bobo Dean
Fried, Frank, Harris, Shriver & Kampelman
Suite 1000, The Watergate 600
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Dear Mr. Dean:

This will acknowledge your December 30 letter and confirm my telephone conversation with you regarding an IPA assignment for Mr. Fred Baker.

We cannot approve an IPA assignment for Mr. Baker to the Tanana Chiefs. We have determined that Bureau key positions, such as Area Directors and Superintendents, will not be subject to an IPA assignment. We will respond to your letter in detail just as soon as we receive additional information from Audit and Investigation and the Solicitor's office.

Sincerely yours,

Ben Reifel
Commissioner of Indian Affairs

CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA

From the Office of —

GRANTS, CONTRACTS
&
RESEARCH

P. O. Box 38
Concho, Oklahoma 73022
(405) 262-3973

June 24, 1977

TESTIMONY OF CHEYENNE - ARAPAHO
TRIBES OF OKLAHOMA ON
PL93-638 "SELF-DETERMINATION"

The Honorable James Abourezk
Chairman, American Indian Policy
Review Commission
Congress of the United States

Dear Senator Abourezk:

The Southern Cheyenne and Arapaho Tribes of Oklahoma would like to thank you for this opportunity to submit testimony to the Senate Select Committee on Indian Self-Determination. Although this testimony represents the views of our Tribes, we feel that what we have to say is representative of many Tribes' concerns. Therefore, we feel we speak with a broader and deeper voice in raising issues and explaining our actions and viewpoints toward the philosophy and practice of Indian Self-Determination.

First, we believe that the problem is not just one of the Self-Determination Act or its rules and regulations. We do not intend to pick at specifics of the Act or interpretations of various statutory or regulatory provisions. To us, the issue is larger than just the law, which is too often used as the whipping post by either Tribes or the Federal bureaucracy.

We believe that the heart of the issue is the whole Tribal - Federal Government partnership, a unique relationship with fundamental legal and historical roots that mandates a special response by the Federal Government to Tribal needs and rights. There are basic problems in this partnership that compromise the intent and practice of Indian Self-Determination as legislated by PL93-638. Among these problems are:

1. A lack of clear definition of the needs of Tribes against which all this Self-Determination and other Federal machinery is supposed to be mobilized.
2. No assessment of how well the Federal government, or the Feds in partnership with the Tribes, are addressing these needs.
3. A feeling shared by many Tribes that the Federal response is inadequate, fragmented, and full of overhead costs that limit direct services to Tribes. Some say the BIA overhead is as high as 75 - 80%.

So what we have is a new philosophy, as expressed by Public Law, but an old burearcratic syndrome.

Why is the federal response inadequate and why does this jeopardize PL93-638? Let's look at a few reasons from our Indian perspective:

1. There's a question as to whether Federal agencies are really interested in, or competent at, delivering programs or management assistance to Tribes. Why is it with almost 15,000 BIA employees

(Just to name one Agency), Tribes have such a hard time getting qualified technical assistance or a real understanding of how our People are being served everytime the Bandanalysis or Bureau budget proposals go through their annual cycle.

2. We always have to play by the Federal clock which only works between 9 and 4:30 (with breaks, of course) and measures progress in decades, while we live and die over 24 hours a day and measure survival in minutes and hours.

3. The Federal government and its massive empires don't know themselves. It's like a Tribe, to assert its sovereignty and address its needs, has to deal with 10 separate foreign countries in Washington, D.C., or at the regional level. These Federal foreign countries don't talk to each other, jealously guard their own domains and make separate rules. We wonder how many know that there is such a thing as Indian Self-Determination or a Public Law to support it?

4. In the BIA, Self-Determination means job insecurity. If BIA employees are to truly develop Tribal capacity and allow Tribes to control services through contracting then there should be a lot of people either working themselves out of a job or coming over to join us. Therefore, underperformance becomes an informal goal if you want to stay sweet and happy on the Federal payroll.

So where does this leave us? There's got to be a better way for the Federal government to do business if at least their side of the coin in Self-Determination is to work. This does not mean that changes in the BIA are necessarily the solution. As a matter of fact, Tribes are depending less and less on the BIA for funds and support in recent years. Historically, the BIA Agency was the special federal pipeline and steward. Now HEW, DOL, EDA, etc., are the major providers. Therefore, although the BIA has been historically our main Federal source and contact, we now deal with the Bureau as one of many contacts and any changes to address Indian needs and implement Indian Self-Determination must deal with all potentially involved Federal Agencies. With this in mind, we recommend the following:

1. That a single Federal staff resource or resource unit be established per Tribe, whose charge will be to coordinate and expedite activities of all Agencies. In effect, an intergovernmental office be established to pursue Tribal interests. This office or officer should also be charged with writing applications or proposals where necessary. And if you want to see administrative rules and application requirements changed quickly, just make the Feds go through the same hoops we jump in and out of so many times every year.

2. That the Federal government forms its training and technical assistance responsibilities to Tribes in one office or individual. Tribes desperately need capacity building, but we shouldn't have to go door to door to get separate pieces of what is a central and manageable set of tools.

3. Establish a national Tribal policy/advisory group at a sufficiently high level and on a continuing basis to receive Tribal input and

help direct national policy toward Tribal needs. Again, this need not be a handmaiden of the Department of the Interior but may be, more properly, at the Federal Domestic Council level.

4. Develop and maintain a system of continual monitoring and evaluation of Federal response to Tribal needs as well as Tribal activities and initiatives in Self-Determination. Again, make such reporting responsible to a higher umbrella body, such as the Office of Management and Budget, so that intergovernmental activities and problems are reviewed and related to Tribal needs.

What all this means (and these are not especially new ideas), is that if you want something done, you make someone or some body responsible for seeing that actions are taken. However, given all these good ideas, we're not going to hold our breath and wait for change. The Federal bureaucracy and Congress moves by its own slow pace. But Tribes have the opportunity to take the initiative and move more quickly. That's our side of the partnership formula. We have dwindling resources and the destiny of our peoples before us and we can't wait for the Government to ponder its role in Indian Self-Determination. Nor do we want to use Federal inaction and inertia as an excuse for our own. Therefore, we have used PL93-638 to do a number of things to plan for and assert our place as a sovereign people with critical needs and limited time. Let us share with you now how we are positively using Self-Determination to build our capacity.

1. Governing body training in self-government principles/practices as well as Development of formal by-laws and procedures to guide this and future governing bodies.

2. Planning for and development of short and long range strategies for addressing Tribal rights protection, self-government, and law and order issues. This includes developing strategies for legal assistance, land and water rights, law enforcement and Tribal control of major programmatic areas such as education.

3. Intensive analysis of feasibility of contracting various BIA programs and development of a multi-year contracting strategy.

4. Analysis of Tribal management capacity and development of program management systems (financial, property, personnel, project planning, and control) and on-going training of staff in the implementation of these systems.

5. Development of a Tribally staffed Grants Contracts and Research Unit that provides for centralized coordination of grants, proposals and contracts and technical assistance to Tribal members and Tribal programs in dealing with State and Federal sources of financial assistance.

6. Comprehensive Tribal program planning for the next 3 years across all program categories so that Tribal needs and priorities are established as a basis for program development.

7. Development of a Joint Funding strategy and application to simplify and consolidate the various federal programs into one manageable whole, instead of 15 - 20 programs with separate administrative controls, budget years, audits, reports, etc.

8. Forcing the Federal government bureaucracy from Office of Management

and Budget down to various departments, to come together in one session (and meeting themselves for the first time) so that Tribal needs and initiatives could be presented and discussed, without forcing the Tribes to go from building to building and door to door to face the fragmented and uncoordinated federal response to a unified Tribal strategy.

9. Planning of special 638 orientation and training approaches for Tribal members (not just elected officials and administrators) so that the Tribes can go over to its communities to provide an understanding of Self-Determination principles and Tribal initiatives.

10. Making the Bandanalysis review process into a more meaningful exercise by making more demands on the Bureau to provide back-up information on actual service levels, trends, programs, not in the Tribal band, Area data, etc. We are not accepting the Bureau's review schedule, at either the Agency or Area level and are requiring more justification of programs, their services and funding levels.

11. Conduct a special economic analysis for Tribal economic development and enterprises.

12. Preparation of an intensive evaluation of health care delivery to our people using PHS 638 funds and long range planning of health system improvements. This health evaluation is but one aspect of a Tribal approach toward self-evaluation.

13. Selective contracting of BIA services while combining contracting with Tribal management improvements, in a staged fashion.

We are doing all this through 638 Grants, Training and Technical Assistance and Contracting. That's the good news. The bad news is that the BIA is still managing to throw up some roadblocks and, we feel, abuse the intent and implementation of Self-Determination. These problems include the following:

1. The Area Office has held up contract applications in violation of time frames specified in the regulations and not fully advised Tribes of where applications stand or reasons for delay. Furthermore, the Area Office seems to think it can set up its own review criteria and machinery for holding up instead of expediting contracting.

2. Area Offices seem to think that 638 Training and Technical Assistance funds are their special pot of play money and there is no consistent policy nor guidelines as to use. As far as we are concerned, T/TA belongs to the Tribes and Tribes should be notified and consulted on its use, especially when it becomes a ready service for hiring more Bureau employees.

3. There is not enough technical assistance where it counts the most. That means, at the Agency, not the Area. The Area is too distant and too ignorant of most Tribes' concerns to provide the kind of technical assistance we need.

4. The BIA doesn't seem to know how to advise Tribes of how other Tribes are doing under PL93-638 or what possible strategies or approaches a Tribe can take in a given situation. Self-Determination is an issue of National Tribal rights and policy, but the Bureau seems to know very little of what is going on. Maybe some Bureau officials don't want us to know our real rights under PL93-638, or would like to see Self-Determination go away, or are afraid of the responsibilities they may have to shoulder to help us realize Self-Government.

But let's slip back from the BIA for a moment. We don't want to put the Bureau up as a scapegoat because, as we've said, Self-Determination goes beyond the BIA or Department of the Interior. We believe that Tribes must move ahead and stretch and test Self-Determination to its limits. We can use it to our advantage but we must recognize that the Federal government, which is in business to serve our People, is a fragmented, uncoordinated group of empires that doesn't necessarily recognize the philosophy, attitude and law of Self-Determination.

Therefore, we believe Tribes have to push on the entire machinery, not just the BIA. We can't wait for the Federal Government to get ready to be a partner, but we can help shape their readiness and push them, as we have by convening multiple departments plus oversight agencies like the Office of Management and Budget to hear Tribal needs and requirements. We must start being the instructors and trainers in Self-Determination and we encourage other Tribes to join with us in this approach.

We thank you, Mr. Abourezk, for hearing our concerns.

Respectfully,

Juanita, L. Learned
Chairperson

OVERSIGHT HEARINGS ON P. L. 93-638

TESTIMONY

OF THE

CHEYENNE RIVER SIOUX TRIBE

OF

SOUTH DAKOTA

PROBLEM

1. Congress has never appropriated enough money to fund the grants portion of the law to fund adequate training and technical assistance or the redesign of Bureau of Indian Affairs programs.

2. Bureau of Indian Affairs personnel do not fully understand the regulations governing the implementation of P. L. 93-638.

3. Bureau of Indian Affairs Programs are not in shape to be contracted, i.e., they are underfunded, understaffed and misdirected.

4. When tribes contract they are held to more rigid standards and regulations then the Bureau of Indian Affairs hold themselves utilizing the programs described in 3 above.

5. Although the law puts burden of proof on the Bureau of Indian Affairs when declining contracts the Bureau of Indian Affairs has been making tribes prove that they are capable of contracting, although a tribe may already be handling other contracts already.

EFFECT

1. Without sufficient funds appropriated to fully implement Section 104 of the Act, tribes will never be in a position to contract and manage programs as Congress intended.

2. Wrong information given out by the Bureau of Indian Affairs causes long delays in the contracting of programs.

3. Tribes are prevented from carrying out contracts because of lack of funds, staff and are forced to carry out programs as the Bureau of Indian Affairs sees them and not as they should be run.

4. While the Bureau of Indian Affairs can mismanage programs in direct conflict with their own regulations and manuals, tribes must fulfill all the requirements in regulations and policy manuals.

5. Tribes must prove time and again their capability of handling contracts with little or no meaningful assistance.

SOLUTION

1. Congress should contact each tribe to see what their long range needs for Section 104 funds will be and appropriate the necessary amount of fully implement Section 104.

2. The Secretary should require at least one person in the Bureau of Indian Affairs know what the regulations say so the tribes can get a straight answer to the many conflicting, ambiguous and confusing portions of the 638 regulations.

3. Each tribe should be required to develop and justify its agency budget, number of staff needed and the direction the agency and its programs will take. Thus, when a tribe is ready to contract a program the Congress can be assured their intent will be carried out as Congress intended not as some bureaucrat intends. This should be done independent of the band alalysis which we consider another failure.

4. Will be taken care of by three-above.

5. Once a tribe has demonstrated its ability to contract there should be no more interference by the Bureau of Indian Affairs.

6. The Bureau of Indian Affairs personnel are deliberately holding back or delaying services via subtle harassment or a lack of cooperation to force us to contract.

6. Causing much confusion and demoralization among tribal officials and undue hardship and suffering by the people.

6. Make an honest and sincere effort to carry out the intent of the law, i.e., allow us to determine for ourselves when or if we wish to contract.

EXECUTIVE OFFICE OF
Principal Chief, Choctaw Nation
Box 59
Durant, Oklahoma 74701

[illegible]
[illegible]

[illegible]

June 30, 1977

Honorable James Abourezk
3321 Dirkson Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Abourezk:

As a result of your chairing the Select Committee on Indian Affairs, this letter requests your assistance in resolving certain problems faced by the Choctaw Nation of Oklahoma with regard to P.L. 93-638, The Indian Self-Determination and Education Assistance Act of 1975.

The Choctaw Nation has met few serious problems with reference to P.L. 93-638, but has been faced with several minor problems.

These minor problems are easily avoidable with the cooperation of the Bureau of Indian Affairs. To date this needed cooperation has not been realized.

There follows two problems faced by the Tribe which illustrates the situation.

The Program to Provide Adult Education, a 93-638 contract, needed to be modified. In the submitted modification there was included a new line item "RENT" and an amount allocated to be spent for that purpose. The modification was submitted through the proper channels as per regulation. However, upon receipt of the modification, the Agency Superintendent returned the modification to the tribe along with a letter stating the "we", meaning Bureau personnel, could not approve such a modification.

The Agency Superintendent was contacted and the Tribe requested that second consideration be given the matter since only the Commissioner of Indian Affairs has declination power on either initial contract applications or contract modifications of existing programs, and then only for the specific declination grounds listed in the Federal Register. The modification was resubmitted and is currently in process of approval.

With regard to the FY76 93-638 Grant which the Tribe operated, there arose a situation wherein Bureau officials met with tribal personnel to negotiate the Grant Agreement. During these negotiations it was mutually agreed upon that certain amounts of funds would be given the Tribe to achieve specific goals which were set in the grant application. Methods of achievement, methods of evaluation, and financial/operational management systems were reviewed and agreed upon. Upon their departure, the Bureau officials took the agreed upon document back to the Area level and began processing the award. However, upon receipt of the grant agreement for tribal signature, Special Conditions had been added to the grant which, in some cases were in opposition with the Federal Register governing P.L. 93-638.

This placed the Tribe in a somewhat awkward position. New employees had been brought on board to implement the new program and were accruing salaries and fringe benefits from the negotiated grant, so there was little time to re-negotiate these add-on Special Conditions, which in some cases opposed the Federal Register.

The Tribe made the decision to sign the grant agreement as received and then attempt to modify the items which were in disagreement with the Federal Register after the grant was in operation. After much letter writing and attempts to achieve this goal, the Tribe was successful in chieving their desires.

The one statement which stands out during these negotiations concerning the grant was made by the Contracting Officer's Representative, who at one point stated that the Tribe "didn't have to sign it" if we were so unhappy. However, due to the employ of several persons based upon our original agreement, it was in fact necessary to sign or terminate the employees until the Special Conditions could be agreed upon.

While realizing that these problems are minor, it must be realized that staff time, travel, and effort were spent in correcting errors which should not have arisen in the first place. The same staff could well have been striving to achieve the stated objectives of the original grant agreement rather than resolving grant agreement stipulations with regard to Special Conditions.

This office wishes to thank you for any assistance you or your staff might lend in resolving this matter.

Sincerely,

Robert L. Walker
Assistant Chief
Choctaw Nation of Oklahoma

RLW/DRH/wr

KODIAK AREA NATIVE ASSOCIATION

BOX 172
KODIAK,ALASKA 99615
PHONE: (907) 486-5726

July 7, 1977

Statement of Frank R. Peterson,
Executive Director
Kodiak Area Native Association

The Kodiak Area Native Association submits this statement of its executive director as testimony before the Senate Select Committee on Indian Affairs oversight hearings on Public Law 93-638. KANA is headquartered in Kodiak, Alaska and provides services to Alaska Natives in Kodiak and to the Native villages on Kodiak Island. KANA currently provides health services through IHS contracts and intends to contract BIA social services as soon as possible. KANA also provides numerous other services, in the areas of tribal management training, employment assistance, and housing for example.

Probably the most pervading concern in Alaska with respect to the implementation of P.L. 93-638 has been the definitions of "Indian tribe" and "tribal organization". These definitions have been the subject of numerous meetings and hearings including hearings before the Senate Subcommittee on Indian Affairs held in Alaska in September, 1976. We see no real need to add further testimony on that issue, but would like to point out that the issue has not been satisfactorily resolved. As has been pointed out many times, the regional non-profit associations in Alaska are the logical contraction bodies in the vast majority situations. Yet, before a contract can be let, the government requires us to provide consenting resolutions from every conceivable tribal entity within our region - if that is not provided the contract is not let out. KANA has never experienced any difficulty with a village in our region objecting to our receiving a contract. We have, however, experienced difficulty in obtaining consenting resolutions because of the fishing season, weather difficulties, etc. We suggest that the way to clear up these problems is to have a provision for dissenting resolutions rather than consenting resolutions. That is, if another tribe desired to contract, or objected to the regional associations contracting, they could submit a dissenting resolution to the contracting authority. This would serve the dual purpose of giving all tribal organizations their opportunity to be heard and relieving the regional association of an administrative burden.

It is our understanding that these hearings are concerned with the implementation of P.L. 93-638. At its lowest level, implementation means simply doing what the act and the regulations require. It has been KANA's experience that 93-638 is not being effectively implemented; federal agents are simply now following the requirements of the Act. As a case in point KANA applied for a grant from the BIA in the amount of $88,000. Our contracts and grants officer was notified by the Area office by phone that the grant had been approved and that we could begin spending the money. It was only at the end of the grant period, after the money had been spent, that we were informed that the grant had been approved for only $44,000. This grant documentation after the fact is not within the letter and spirit of 93-638 nor does it follow BIA's own regulations. Parts 227.20 and 272. 22 of the regulations set forth deadlines for administrative action on grant which are simply not being followed.

This situation is not only one example of the bureaucratic and administrative problems encountered in implementation of 93-638. We are at something of a loss in proposing a solution to force federal agencies to follow the requirements of the act. These problems suggest that the contracting agencies have entirely too much control over the contracts and have, in fact, a vested interest in not following those requirements. What we would suggest is that contract administration be removed from those with such a vested interest. We would suggest that an investigation be made as to the viability of placing contracting authority in an entirely separate body from BIA or IHS.

KANA is submitting this testimony after the oral testimony heard in Albuquerque, New Mexico on June 24, 1977. At that hearing it was suggested by Alan Parker, committee counsel, that there may be a possibility of block grants to tribes - a concept somewhat in the nature of revenue sharing. KANA is highly supportive of this concept for the reason that it is far more in the spirit of self-determination for Indian tribes. Yet in the administration of the act there is very little "self-determination" involved. "Negotiation" with the BIA or IHS is a misnomer - there is little negotiating done. Negotiation under the present system is primarily a choice between accepting bureaucratic directives or not getting a grant or contract. Further, it can hardly be called self-determination when it is pre-determined by the federal agency exactly how money is to be spent. The implementation of the act by the contracting authorities has had a strong tendency to only create another level of bureaucracy. The tribes supposedly administer the contracts but they are watched over by a horde of contract representatives and administrators. That bureaucratic level costs money that could be more effectively spent at the tribal level. The block grant or revenue sharing concept would more effectively implement the concept of self-determination in that the decision as to how the money is spent would be made at the tribal level. It would further provide more efficient use of funds - several levels of bureaucratic middlemen would be eliminated.

KANA's experience with grants and contracts under P.L. 93-638 has been a somewhat frustrating one with respect to the types of contracts being let. The only type we have yet seen is a cost reimburseable contract. What this essentially means is that the tribal organization ends up financing the first few months of a program operation. The money to pay the rent and for salaries has to come from somewhere, and since advances are slow, inadequate, and an administrative problem to get, money ends up being stunted temporarily from other program funds. When those other programs are seriously underfunded, an accounting and cash flow nightmare is created. The solution is obvious: either fixed price contracts with the money up front or adequate advance money and a simplified procedure to obtain advances.

We are uncertain why BIA and IHS are reluctant to allow fixed price contracts. We suspect that it is due to a desire to control the contract, to "determine" Indian affairs rather than to allow self-determination. This attitude manifests itself as well in the requirement that unspent contract funds must be returned to the government. A tribe should not be penalized for an ability to run a program more efficiently than a federal agency. There should be a provision allowing redirection of unspent program funds and program income at the tribal level.

In summary, it is our feeling that P.L. 93-638 is a step in the right direction and that progress toward self-determination has been, and will continue to be made. The problems that have arisen lie mainly in the administration of the act. We are very pleased to see that Congress, through oversight hearings such as this, is maintaining an interest in the implementation of the act, and we are confident that if Congress acts upon the recommendations that various Indian and Alaska Native organizations and individuals have made, the problems with the Act may be overcome.

KODIAK AREA NATIVE ASSOCIATION

Frank R. Peterson
Executive Director

PI 638

Phone 518 358 2950

MOHAWK TRIBAL COUNCIL

AKWESASNE

Mohawk Tribal Council
Mohawk Indian Reservation
Akwesasne (Hogansburg), New York
13655

June 22, 1977

Ernest L. Stevens
Staff Director
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Mr. Stevens:

In behalf of the St. Regis Mohawk Tribal Council I would like to address myself to some of the questions regarding P.L. 93-638.

While the St. Regis Mohawk Tribe does not have the contracts that many of the western tribes have, we do have some, and have not had problems in getting overhead costs.

With grants we have had problems with the time span in which the tribe submitts the grant application and when the funds actually arrive. This seems contrary to the concepts of the grants, since they are non-competitive and are based on tribal population. This length of time, up to six months, has seriously hampered tribal programs dependent on this funding. Furthermore, grants have been sent back for revising when there was no apparent need to do so. In this area, I thought that tribal priorities were over bureau "recommendations".

On the question of tribal population the St. Regis Mohawk Tribe has sent to the Bureau an amended population figure, yet there has been no word on whether it has been accepted. The 1970 census is obsolete on our reservation.

In closing I would like to have any reports generated from the hearings in Albuquerque, as I am unable to attend because my PL 93-638 grant monies have not arrived as of this date.

Sincerely,

Hollis L. White

Hollis L. White

NATIONAL INDIAN MANAGEMENT SERVICES, INC.

July 1, 1977

Mr. Palmer Marcantonio
Office of Management and Budget
Financial Management Branch of
Budget Review Division
New Executive Office Building
17th and 8th Streets, N.W.
Washington, D. C. 20543

Dear Mr. Marcantonio:

This letter is a follow-up to our conversation of June 30 with you and Mr. Todd concerning contradictions in the application of the implementing Regulations of the Indian Self-Determination and Education Assistance Act and Federal Management Circular 74-4.

In our business here we have performed various services for numerous tribes. Most frequently we have been involved in the preparation and negotiation of indirect cost rates for Indian tribal governments. Through our experience in this area, we have come to discover that the manner in which the Government has implemented the Indian Self-Determination Act is actually counterproductive to the policy of Self-Determination and the strengthening of tribal governments.

I am enclosing a copy of the Act, as well as the Regulations. Please note the basic purpose of Self-Determination grants, described in section 104(a) (1) of the Act is to promote "strengthening or improvement of tribal government..." What has really happened, through the use of Federal Management Circular 74-4 as a guide in developing the Regulations, is that this basic purpose has been tremendously interfered with and, in a sense, reversed.

An analysis of the provisions of Appendix A of Part 276 of the Regulations ("Principles for Determining Costs Applicable to Grants") will demonstrate that the author has duplicated nearly word for word the provisions of FMC 74-4. The author thus made an unstated policy decision that Indian tribal governments are to be defined as state or local governments. Unfortunately, tribal governments are not state or local governments, and the circumstances in which they find themselves are quite, quite different.

Unlike state or local governments, tribes have no tax base from which to obtain revenues, but must depend almost exclusively on support from federal grants and contracts. Unlike localities, tribes receive no funds from the state in which they are located for governmental purposes. Thus support for legislative and executive functions must come from federal sources -- yet both FMC 74-4, in Attachment B, Parts D6. and D.8, and the Regulations, in 25 CFR 276 Appendix A

Part II.D.6., prohibit this use of federal funds.

While the Regulations provide as an activity exemplary of the purposes of the Act "developing the capability of the executive, legislative, and judicial branches of tribal government," (section 272.12), the Cost Principles Appendix takes away the funding of this activity.

Appendix A also requires (section C.9.) that if tribal officials are to be hired as program personnel, their employment must be approved in advance by the Bureau of Indian Affairs. This, too, is in basic conflict with the policy of Self-Determination.

Strict enforcement of these provisions can be disasterous to tribal governments, as the experience of my tribe, the Mississippi Choctaw, demonstrates. After enforcement, four members of the Tribal Council had resigned from the Council and three were terminated from their employment in tribal programs. When eight Council seats came up in the succeeding election, no one filed as a candidate in five of the races. This was because, already prohibited from employment with the Bureau of Indian Affairs or the Indian Health Service, denial of tribal employment to Councilmen usually means denial of employment period. Our government is now crippled because of Regulations designed to strengthen it.

We note that 25 CFR 271.5 provides that the Secretary of the Interior may waive Federal laws, executive orders, regulations, or other administrative requirements, but evidently he has not seen fit to waive FMC 74-4.

I believe that in order to implement the purposes of the Act, it should be made clear that FMC 74-4 does not apply to Indian tribes and that federal monies may be expended by tribes for Tribal Council and executive salaries and expenses. While we certainly believe there should be safeguards against true conflicts of interest, such as officials doing business on a contract basis with the tribe, nepotism, kick-backs, corruption, etc., -- salaries and expenses do not form the basis for a true conflict of interest.

In many cases, we have negotiated with regional offices which do not allow such expenses to be claimed in the calculation of indirect costs. This not only further complicates the situation but works to the disadvantage of the tribe through eventual reduction in administrative resources. Tribal Chief executives and Council members are basically administrators in a sense that local officials are not, and should not be penalized by imposing FMC 74-4. Indirect cost funds, though of federal origin, in a sense belong to the tribe and their expenditure on the salaries of tribal administrators and Council members should be allowed.

Please see what might be done to remedy this situation; the future of many Indian tribal governments may actually be hanging in the balance. I would be happy to supply you with any further information you may need, and look forward to your advising on this, as we need the information for preparing proposals for Fiscal Year 1978.

Sincerely,

Phillip Martin

Phillip Martin
President

cc: Commissioner of Indian Affairs
Honorable James Abourezk
Executive Director, NCAI
Executive Director, NTCA

NP 77-411

RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, THE NEZ PERCE TRIBAL EXECUTIVE COMMITTEE DID DURING ITS SPECIAL MEETING RECONSIDER RESOLUTION NP 76-253; AND

WHEREAS, SAID RESOLUTION REQUESTED THAT THE IDAHO CONGRESSIONAL DELEGATES INTRODUCE INTO THE CONGRESS OF THE UNITED STATES THE FOLLOWING PROPOSED AMENDMENT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, PL 93-638: "AN ACT. TO AMEND THE INDIAN SELF-DETERMINATION ACT, PL 93-638. BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, THAT SECTION 106 OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (25 U.S.C. 450), IS AMENDED BY ADDING THE FOLLOWING SUBSECTION AFTER SUBSECTION (H) THEREOF: (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY CONTRACT BETWEEN THE UNITED STATES TO AN INDIAN TRIBE, UNDER THIS OR ANY OTHER LAW, SHALL, AT THE REQUEST OF THE INDIAN TRIBE, CONTAIN A PROVISION SECURING TO THE CONTRACTOR OR GRANTEE THE EXCLUSIVE RIGHT TO COPYRIGHT ANY MATERIAL PRODUCED BY SUCH CONTRACTOR OR GRANTEE AND THE EXCLUSIVE, IRREVOCABLE LICENSE TO USE OR DISPOSE OF SUCH MATERIAL OR ANY RIGHT THEREIN AS THE CONTRACTOR OR GRANTEE SEES FIT".

NOW, THEREFORE, BE IT RESOLVED, THAT THE NEZ PERCE TRIBAL EXECUTIVE COMMITTEE HEREBY REAFFIRM NP 76-253.

CERTIFICATION

THE FOREGOING RESOLUTION WAS DULY ADOPTED BY THE NEZ PERCE TRIBAL EXECUTIVE COMMITTEE MEETING IN SPECIAL SESSION AUGUST 3, 1977, IN THE TRIBAL CONFERENCE ROOM, LAPWAI, IDAHO, A QUORUM OF ITS MEMBERS BEING PRESENT AND VOTING.

BY:
CONSTANCE J. WATTERS, SECRETARY

ATTEST:

Wilfred A. Scott
WILFRED A. SCOTT, CHAIRMAN

PIT RIVER HOME AND AGRICULTURAL COOPERATIVE ASSOCIATION
XL INDIAN RESERVATION
ALTURAS, CALIFORNIA 96101

June 1, 1977

Mr. Ernest Stevens, Consultant
Senate Sub-Committee on Indian Affairs
House Office Building - Annex #2
2nd and "D" Street S.W.
Washington, D.C. 20515

Dear Mr. Stevens:

I am attaching a copy of my June 1, 1977 letter to Mr. Robert McSwain, relative to PL 93-638.

The Implementation Processes of PL 93-638 in California, as in other IHS areas, is most depressing.

Since the conditions described in my letter to Mr. McSwain are a matter of record, I would strongly urge a Committee review of the Implementation progress (?) in California.

Senator Abouresk's Committee should avail themselves to such an opportunity to establish a documented oversight on the shambles being made of the desirable features of PL [illegible]-638.

Respectfully

Erin Forrest, President

EF:mw

MODOC-LASSEN
INDIAN DEVELOPMENT
COMMITTEE
BOX 251 ALTURAS, CALIFORNIA PHONE 233-2504

June 1, 1977

Mr. Robert McSwain
Director CPO - Indian Health Service
2800 Cottage Way
Sacramento, Ca. 95825

Dear Mr McSwain:

On September 9, 1976, the Modoc-Lassen Indian Development Committee, (Modoc Component) submitted a request to Contract for the delivery of Health Services under PL 93-638.

Having provided these services through a Buy Indian Act Contract with the California Rural Indian Health Board since 1969 and the subsequent opinion that Tribal Organizations in California could contract under 638, I am wondering why we have received only your initial notification of receipt of our Proposal.

This organization has not received any further official notice relative to the status of the Proposal as is required in the Regulations. Within a few days nine (9) months will have elapsed.

The fact that not one 93-638 Grant or Contract has been approved in this State, is distrubing. My organization submitted an initial Grant Proposal in your office more than twelve months ago!

I have, in the past, taken issue to the lack of communications in IHS, particularly at the Central Office level and my personal experience today, relative to missing documents vital to funding, convinces me that the communications problem is worsening rather than improving.

I trust that you will provide some answers soon because someone is clearly in violation of the regulatory processes in the law.

Sincerely,

Erin Forrest, Director

EF:mw

cc: Indian Policy Review Commission

PUEBLO OF ZUNI
P. O. BOX 338
ZUNI, NEW MEXICO 87327

EDISON LASELUTE
Governor
BORDON ZUNIE
Lt. Governor
QUINCEY PANTEAH
Head Councilman
VIRGIL WYACO
Councilman

FRED BOWANNIE
Councilman
CHESTER MAHOOTY
Councilman
LOWELL PANTEAH
Councilman
CHAUNCEY SIMPLICIO
Councilman

In reply refer to:
Office of the
Governor

JUL 18 1977

The Honorable James Abourezk
United States Senator
Senate Office Building
Washington, D. C. 20210

Dear Senator Abourezk:

During the oversight hearing you conducted in Albuquerque on June 24 you invited additional testimonies for a period of 10 days. We are accepting your invitation with these comments.

Congressional intent through PL 93-638 and PL 94-437 are to enable Indian Tribes and Indian organizations to administer to their own affairs that are now and historically done by the federal government. Indians now supposedly have the right to determine and mold their own destinies through contracting with the government.

The Zuni Tribe is proud to have pioneered in the process of self-determination even before these laws were developed through contract with the Bureau of Indian Affairs (BIA) since 1972.

The Zuni Tribe also performs three health services through contracts with the Indian Health Service (IHS) and another with National Institute on Alcoholism and Alcohol Abuse (NIAAA). These experiences reveal certain discrepancies that should be addressed before 638 and 437 are bogged down in ruts through restrictions and limitations.

The greatest problem is budgetary limitations. When Indian Tribes contract to provide services normally performed by civil service employees we must attest to the fact that quality and quantity of services must be at least equal to that of the government. We have upheld these committments and have relieved the federal government of these responsibilities. When these contract services began in 1972 a tribal pay scale equal to the civil service scale was established because levels of responsibilities were equal. After the first year, budgetary limitations imposed by the BIA began a deterioration of our pay plan. The most we are able to achieve for our employees is an average of 3% annual step increase. Civil service salaries have been adjusted several times since then to compensate for cost of living increases to the point where a GS-5 grade receives 74% more than the equal level on the tribal pay scale. We are now required to violate our well-intended plan by recruiting to fill positions at grades higher than what is justified so that we can offer higher salaries to attract better qualified applicants if funds allow. This would be equal to the civil service hiring at a GS-12 to fill a GS-9 position. Career ladders are ineffective because we are unable to provide pay raises as planned after employees achieve specified levels of skill and performance. When employees transfer to other departments within the tribal government, the recieving department requires that the employee use up any accrued annual leave before the transfer because they don't have enough funds to sustain the accrued leave.

It may or it may not be the intent of the government but they are causing it to be very difficult to maintain contract compliance. Will this happen under 638 and 437?

Another point of concern are the rules and regulations developed by IHS under which tribes must apply for contract grants.

While we appreciate the government's interest in the integrity of its funds, we believe that these rules and regulations indicate a complete lack of trust in Indians. Consider that we are required to list how many trips by destination, mileage and number of days throughout the budget period. It is facetious to try to predict who will go where 14 months from now.

We are required to indicate exactly how much training each person will receive listing tuition, location and number of days. We will have no idea what training is necessary until we have a staff and evaluate their qualifications and training needs. If we use less than anticipated in any line item and develop a surplus we must have permission to transfer this into another line item where it may be needed. Is this self-determination?

These impositions make it very difficult to write a proposal for a contract that we ourselves can accept as factual and practical. It causes one to think that these impositions may be deliberate for the purpose of disproving abilities of Indians. IHS contract administrators are making their own critical interpretations when flexibility should be allowed. While we have the rules and regulations as guides, we are not informed of their interpretations until they advise us to amend our proposals according to their thoughts.

Senator Abourezk, we do not support the contention of many Indian leaders that these laws are the government's attempt to relieve themselves of their historical obligations to Indians. We are certain that the Congress had good intentions when they passed these legislations. However, the bureaucracy that must administer to these laws is distorting the intent of the Congress.

We urge that your committee explore every possible means of restoring the philosophy of Indian self-determination so that its fullest intent will remain intact all the way from the congressional chambers down to Indian reservations.

We certainly appreciate your consideration on this matter.

Sincerely,

Edison Laselute
Edison Laselute
Governor, Pueblo of Zuni

TESTIMONY

Senate Select Committee

on

Indian Affairs

Albuquerque

June 24 (?), 1977

Wayne Holm

Director

Rock Point Community School

(via) Chinle, AZ. 86503

I am the Director of a Navajo community-controlled "contract" school. The (Rock Point) Community School Board attempted to contract for the school in 1971; they did so successfully in 1972. Rock Point has had the opportunity to follow "self-determination" legislation (from a considerable distance) from the days of S 1017 to the passage of PL93-638 and the formulation of the current 638 regulations.

We have seen (and felt) the effects of PL93-638. While we feel the (Navajo) Area Contracting Officers have made reasonable efforts to respond responsibily to Rock Point's proposals, we feel that they have not always had the support of key Area Office officials they do now. With the implementation of the 638 regulations, the pseudo-legal hassles seem to have all but ceased.

Rock Point today has one of the more sophisticated Indian bilingual programs in the country. Three-quarters of the teachers are Navajo. Most of the teachers are working towards degrees. But this mostly Navajo, mostly local, mostly non-degreed, staff has enabled 6th grade students to score anywhere from a 10 - 25 months ahead of Agency averages on standardized achievement tests. Today, "contracting" has succeeded at Rock Point, enabling the Board to mount a program and achieve results we feel would have been impossible within the Bureau system as it now exists. (It might be appropriate here to note our support for Dr. DEMMERT's efforts to transform that system so as to make it possible for some of these things to take place within the Bureau system.)

While we were not completely satisfied with PL 93-638 as it was passed, we felt it was, at the time, a reasonable compromise between the concerns of Congress, the Bureau, tribes, and tribal organizations or communities. IF the momentum can be sustained, PL 93-638 can become a significant means towards greater community and tribal self determination. If NOT, PL 93-638 could become the means where by Indian communities become increasingly enmeshed in already-determined federal procedures and processes with little gain in self-determination.

Some eighteen months later, oversight hearings are being held to obtain community and tribal reactions to the "contracting" under PL 93-638.

Our concern, which has led us to ask to testify, is with the accessibility of contracting. Contracting today is accessible to larger and/or more sophisticated tribes. It is not as accessible to smaller and/or less sophisticated tribes, communities, and organizations. Yet it should be noted that most of the 26 (?) existing "contract" schools came into being through local initiative: small, rural, relatively unsophisticated tribes, communities or organizations. My concern today is that the new regulations may very well make contracting even more un-accessible.

I am sure that those schools that have benefitted from the services of lawyers, accountants, management specialists, education finance specialists, and the like in coping with existing regulations are appreciative of these services. But I am concerned that the implementation of 638 contracts has required these services. And I am fearful that increasingly complex 638 regulations may make rural community school Boards increasingly dependent upon such 'specialists'.

When one has lived in one small rural Indian community as I have for the last seventeen years, one sees a considerable gap between the degree of sophistication of the tribal government and of community people in dealing with complex Anglo institutions. The community school, and perhaps the co-op store, may be the only relatively complex institutions that are accessible to rural community management. Accessible in the sense that community managers can get feedback soon enough to do something about it. Most rural community people can tell whether or not their children are doing better (or worse) than they were last year. And few people will knowingly manage a school in such a way as to impair their own child's education. Given the opportunity, enough money, access to expertise, and open politics, most communities will in time deliver better education to their children. And, in learning to manage a relatively less complex institution, will be better prepared to cope with more complex institutions: banks, legal services, hospitals, and the like.

The consequences of what may happen if rural communities are not empowered is frightening. Without insight into, or access to, the workings of the complex institutions that increasingly control their lives, whole communities will be left behind. PL 93-638 regulations must be structured in such a way as to make it possible for small, relatively unsophisticated tribes, and community tribes to come to manage increasingly large areas of their own, and their children's, lives.

On the following pages, I have attempted to note some examples of what I am talking about: the increasing un-accessibility of 638 contracting as it is meshed with other complex activities of the government. I am not a lawyer or an accountant; I am not even by training an educational administrator.

I am trying to give you, as simply as I can, a view of how some of these things look 'from below'. And some suggestions of what might be done to make 638 contracting more accessible.

(While I am aware that community-controlled "contract" schools are only one form that 638 contracting, it is the only form I know much about. I have made no attempt, in what follows, to generalize beyond that experience.

Letter of Credit

PL93-638 regulations seem to mandate the use of Letter of Credit for all contracts in excess of $120,000.

The Letter of Credit is not what is purports to be. It does not, by a letter of credit, establish a given amount of credit for a school at a commercial depository. It establishes for the school a given amount of credit with the Regional Disbursing Office of the U.S. Treasury.

The basic purpose of the Letter of Credit seems to be to keep funds in the U.S. Treasury (and out of the commercial depositories a "contract" school might use). The school is expected to "draw down" only as much money as it needs as often as it needs. In theory, at least, a school should have nothing in the bank between those times when they meet payroll and/or pay bills.

In practice, the U.S. Mail is not perfect and there is the very real possibility that in the event of a slip-up in the process, a school would be unable to meet a payroll. The Treasury has not been particularly sympathetic to our efforts or those of the Bureau to allow for some sort of modest reserve to avoid this.

We would advocate either 1) work with the Treasury to waive or modify their rules so as to allow small rural community-controlled schools who are without access to sophisticated bank and bank-communication systems the right to hold at least enough money to meet payrolls and pay bills promptly or 2) (as will be argued below) allow the establishment of some sort of contingency funds at such schools for this and other, similar purposes.

Indirect Costs

In the past, there has always been a big problem with the funding of contract schools. As one-school school-systems, contract schools have a number of costs that do not show up on Bureau school budgets: they are paid at the Agency, Area, Bureau, Departmental, or federal government level. As a result, contract schools have had to cut operating costs to make funds available for contract-administration costs. This was to have been resolved by the establishment of an Indian Contract Support Fund. But... 1) the regulations made use of existing "negotiated overhead rate" procedures as the means whereby contract schools might obtain ICSF money and 2) the Bureau appears to have asked for an inadequate amount of ICSF money for this year (and probably next year).

1) Existing regulations for handling "negotiated overhead cost rates" are completely inappropriate for small, rural, contract schools with no other sources of funds than federal grants and contracts. a) The procedures of requesting an indirect cost proposal are complicated and time-consuming. Some contract schools still don't have rates established for FY'77. b) The procedure is unreal: starting with a percentage which is (essentially) a ratio of indirect costs to allowable direct costs, they proceed to take the percentage more seriously than the estimate of indirect costs it was derived

from. The "rate of recovery" cannot be controlled directly by the Board: if the Board does not receive the amount of direct costs they anticipated, or does not spend it as fast as they anticipated, they "underrecover". On paper, at least, they do not have the money with which to pay for people and services involved in contract-management. Of course this is taken care of two years later in the "roll-forward"! But small rural schools do not have any other funds they can use to pay for these very real and necessary costs until the "roll forward" takes care of them. c) The bookeeping is complicated. i) The bookkeeping involved requires a Board to pay close attention to managing the direct costs in such a way that a given percentage of the costs is available (on paper) to pay indirect costs. The Board is supposed to pay more attention to that damned percentage than they are to the purposes for which direct and indirect costs were obligated in the first place. ii) Most contract schools are forced to seek multiple sources of funding to run the sorts of programs the communities want and need. Different funding sources have different fiscal years: for example most OE grants are on a July-through-June basis; the Bureau is (unfortunately for education) on an October-through-September basis. The school is required to treat one of these 12-month periods for Indirect Cost purposes and close the books on all funds at that time. Whichever one they do not chose, they must do the same for that funding source at the end of that fiscal year. This means that for at least five or six months of the year, the school is keeping double books for some or all funding sources to separate obligations from the two contract years or fiscal years. This is inane: again we have the bookkeeping tail wagging the school dog.

2) Because of the use of the "indirect cost rate" or "negotiated

overhead cost" methods, the Indirect Cost rate is negotiated with the Departmental (of the Interior) Office of Audit and Investigations. The costs are paid by the Bureau Area Office. While probably the rate or the costs should be negotiated by A & I, there needs to be more coordination of their efforts to prevent the shortage of funds that has developed this year. It is our understanding that the Navajo Area was allocated $1M for ICSF. Our estimates are that there may be as much as $1.4M in obligations and that the four "contract" schools will require c. $150m-$200m for the July through September period. We have heard that a similar situation prevails nationwide: $10-11M was appropriated but as much as $15-16M may be required.

Probably A & I should be involved in determining the allowable indirect costs. Since the Bureau does not seem to make such a distinction within their own operations, they have had little experience with this. But there does need to be more coordination of the two activities, particularly in trying to make more accurate forecasts of needs in the years to come.

There is at the time this is being prepared no money available for indirect costs at the four community-controlled schools in the the Navajo Area for July-through-September 1977. (And if money is 'found', it will have to be taken from other program's direct costs.) Contract School Boards should not be placed in the position of being expected to fulfill their contractual obligations while being unable to pay their bookkeeping staff or even the telephone bill. This situation must not be allowed to reoccur.

We would advocate the elimination the use of existing "indirect cost rate" procedures as a means connecting contract schools and the Indian Contract Support Funds. There are several ways in which this could be done. An amount, not a percentage, should identified. It should be made a part of the contract. The school should be expected to live within the amounts agreed to (rather than some percentage of a unpredictable and post-determined amount of "allowable direct costs) just as with the "direct cost" portion of the contract budget. The existing methods may work for larger tribes and even for organizations that have some non-federal funds. The complexity, the unreality, the time-lags involved in the current systems ensure acute financial problems for some if not all small rural contract schools.

"Indirect cost rates" are probably necessary for large tribes and tribal organizations, or situations where at tribe, community, or organization is receiving funds for activities other than education. Serious consideration should be given to simpler systems for small tribes, communities, or organizations whereby the Bureau paid just those central administration costs that would not have been paid for by the Bureau if it were a Bureau school. It does not seem unreasonable that in operations below a certain size the Bureau might be expected to pay all central administration costs rather than have to play the extremely expensive (in time and money) "indirect cost rate" game.

Contingency Funds

Small, rural, contract schools are, for the most part, completely dependent upon federal grants. In almost all of these, there are from time to time delays in the receipt of funds. (See the comments on the Letter of Credit above).

Schools are not supposed to use funds from one grant or contract to pay employees under another funding source. And while it does seem that schools can borrow money from banks (if the banks are willing to lend it) interest on such loans is not an "allowable cost".

Contract schools are already rather precarious places to work. Many good people are reluctant to work at a contract school not because of the generally lower salaries but because of real or potential problems in getting paid. (Would you be willing to go to work at Rock Point if you had heard people didn't get paid for the first ten weeks of FY '74 and that there is the possiblity that no indirect-cost funded employees have no assurance of being paid after June 30th this year?)

One solution a number of us advocate would be some sort of contingency fund at the school amounting to, say, 10% of the total funding of the school. There would have to be rather tight restrictions on how this fund might be used: delays in establishing and receiving drawdowns on Letters of Credit, request for drawdowns lost in transit, late arrival of grant advances, etc. But something like this would go a long way to making contract school operation less precarious than it now is.

Accessibility

PL93-638 went a long way in reducing the number of reasons why the Bureau could decline to contract. As part of a trade-off, however, they appeared to raise the requirements for an initial proposal. A potential contract school must now come up with a personnel system, a property management system, and considerable work towards an acceptable bookkeeping system before they can go contract. We recognize the Bureau's concern that these sort of systems be in place before a contract is begun. Most existing contract schools do have or can develop these systems. But they probably could not have done so at the time they initially 'went contract'. They have learned to do so through contracting. New boards must either start at the place it has taken existing Boards several years to arrive at, or... decide contracting is simply too complicated and too risky. Too many Boards have decided just that.

IF contracting is to be a means of increasing tribal or community self-determination, ways must be found to enable other Boards to learn to do these things rather than making them immediately dependent upon outside specialists. One way of doing this would be to make a concerted effort to drastically simplify the requirements of the initial contract for small tribes, communities, and organizations, and to give them time to meet the full requirements. It should be possible to develop radically simplified personnel, property, and bookkeeping systems which new Boards might use as "minimal systems" if they chose until they are able to develop their own.

Contracting Regulations

There was a concerted effort in the formulation of the PL 93-638 regulations to cut required contract language to a minimum. While we felt that even what remained was excessive, we appreciated the effort and the results.

There are indications that a number of clauses which were deleted at that time are again being proposed as required clauses. And that new clauses are being proposed.

We advocate that every effort be made to cut the amount of verbiage in a contract to a reasonable minimum (without resorting to the opposite extreme: incorporating a five-foot library by reference). If rural school boards are expected to know what's in that contract, all the clauses in that contract should be applicable to, say, a school contract.

Lack of Funds as Basis of Declination

PL 93-638 allowed only a small number of relatively well-defined groups for declining to contract.

One of the things that showed up in the suggested changes in 638 regulations was what appeared to be the inclusion of "lack of funds" as a basis for declining to contract. While there is some doubt that this conforms with the wording of the act, there are (from our point of view) considerable grounds for concern here.

The inclusion of such a provision, particularly without recourse to the 638-system of appeals whereby the Bureau must prove absolute lack of funds, opens this up as a potentially cheap way of refusing to contract. We have never begun negotiations in which it was not stated that there wasn't enough money to fund our proposal.

Until or unless the Bureau moves to direct formula-funding the contract schools are sure that the formula actually does meet the requirements of §271.54, and this is included in the declination appeals system (requiring the Bureau to prove that they have distributed funds equitably), such a provision simply invites abuse.

It is our understanding that these provisions are being sought to deal with situations involving a previously private school or where there was no school the year before. The matter would require considerable study but an alternative would be to give the Bureau so much money for "new-starts" each year but that all "contract" schools, once started would become part of the funding base for the following year.

I would like to take this opportunity to thank those members of the Committee whose efforts in the past have made "contracting" one significant means towards greater community or tribal "self-determination". An I would like to thank the Committee for this opportunity to comment on needed changes in the PL 93-638 regulations.

-Wayne HOLM
Rock Point Community School
June 1977

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution and By-Laws, January 6, 1959)
RED LAKE BAND of CHIPPEWA INDIANS
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ADVISORY COUNCIL
LEGAL COUNSEL

UPPER RED LAKE
● PONEMAH
LOWER RED LAKE
REDLAKE ● ● REDBY

June 24, 1977

OVERSIGHT HEARINGS ON PUBLIC LAW 93-638 - TITLE I

GENTLEMEN:

The Red Lake Tribal Council, representing the Red Lake Band of Chippewa Indians, is submitting under separate cover our recommendations for Title II of P.L. 93-638. The testimony for Title I will be forthcoming from the Tribal Council in resolution form.

Recognizing the widespread impact this legislation has on tribal operations, we take this opportunity to comment very seriously. Therefore, I am respectfully requesting that the record be kept open for a period of at least thirty days for additional input.

Sincerely,

Roger A. Jourdain

Roger A. Jourdain
CHAIRMAN

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June 24, 1977

OVERSIGHT HEARINGS ON PUBLIC LAW 93-638 - TITLE II

GENTLEMEN:

Attached herewith is a study of the Red Lake Reservation School financing which serves as further background for our recommendations regarding Title II of Public Law 93-638.

The Red Lake Tribal Council has followed closely the development of P.L. 93-638 and the attendant formulation of rules and regulations for its implementation. We have been dismayed repeatedly with the haphazard processes and activities which are to ultimately result in Indian Self Determination and improvement of our educational systems. We have shared our concerns along every step of the way but have seen no evidence that our tribal input has ever been considered.

The attached study is thus but one more step in our continuing struggle to prove the vital importance of Operational Support for the maintenance of our school system. It is our contention that the crucial decision to phase out Operational Support was based on inaccurate statistics and conclusions set forth by self-styled experts. It was certainly not made in conjuction with the twenty seven schools whose existence depends on this funding. The punitive effect of denying Operational Support is wrongly directed at these twenty-seven schools or tribes rather the state of Arizona at whom censure is obliquely aimed.

Sincerely,

Roger A. Jourdain

Roger A. Jourdain
CHAIRMAN

Chapter I

INTRODUCTION

The Red Lake public school located on the Red Lake Indian Reservation in northern Minnesota is supported by State aid foundation revenue as well as federal aid to education earmarked for Indian students under two main sources of revenue. Both are essential to the district but major emphasis in this paper is placed on the latter.

STATEMENT OF PROBLEM

The purpose of this study is to survey the sources of federal aid to the Red Lake public school district and to analyze the effect these sources of revenue have had on the educational program in that district over a six-year span including the fiscal years of 1970 through 1975.

The federal funding for the Red Lake public school comes almost entirely from Johnson-O'Malley and Impact Aid (PL 874) sources. These funds are urgently needed for operational support of the educational program on the Red Lake Indian Reservation. Without the revenue that the Red Lake school district receives from these two sources, the separate existence of an educational institution on the reservation which it serves, would be nil.

Some knowledge of historical development of education programs and unique characteristics of the Red Lake Indian Reservation is essential for understanding the hypothetical proposition stated above. This study is intended to provide evidence to support or test this proposition.

THE RED LAKE RESERVATION AND SCHOOL DISTRICT

The Red Lake Band of Chippewa Indians are the sole owners of what remains as the diminished Red Lake Indian Reservation.[1] It is one of the few closed reservations in the United States and it has the distinction of never having ceded the present diminished reservation, it being held by right of conquest and aboriginal title. The band has consistently opposed the federal government's allotment plan and has maintained the legal status of the closed reservation.[2]

The Red Lake school district, as an independent public school district coterminous with the Red Lake Indian Reservation, is unique. A large portion of its 637,000 acres of land, held communally by the Band, is tax-exempt. As a result, school support depends almost exclusively on state and federal aids. Nearly all adults and children in the district are of Chippewa Indian ancestry.

The reservation land almost entirely encompasses Upper and Lower Red Lake within the boundaries of the reservation which consists of 230,000 acres. The Red Lake Indian Reservation is the home of the band of Chippewa Indians that have adopted the same name as the lake which constitutes the principal part of the reservation. The land area owned by the Red Lake Band totals 805,722 acres of land which includes part of the Northwest Angle and scattered restored lands which are not contiguous with the reservation.

Three villages, Red Lake, Redby, and Ponemah are located within the reservation.

Red Lake has a population of 1700, Redby has 1100, and Ponemah has 700. The rest of the population on the reservation live in scattered homes.

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[1] Chippewa Indians v. United States, 301 U.S. 358, pp. 373-375.

[2] Ibid., p. 386.

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The headquarters for the tribal offices in Red Lake are joined there by the office of the Bureau of Indian Affairs and the Red Lake Indian Hospital. This town is also the location of the Red Lake High School, Red Lake Elementary School, and St. Mary's Mission School.

Redby is located five miles east of Red Lake. The Red Lake Indian Mill and the Red Lake Fisheries Association are located in this village. Commercial fishing and lumbering here are economic activities that are of importance to the entire reservation.

The village of Ponemah is located twenty five miles north of Redby on the penninsula between Upper and Lower Red Lakes. Most commercial fishing lately takes place in the Ponemah area by many families along the northern shore of Red Lake to Ponemah Point and also in Upper Red Lake. The Ponemah Elementary School is also located in this village.

SCOPE OF THE PROBLEM

A complete analysis of the financial status of the Red Lake school district is beyond the scope of this study. However, two major sources of revenue from the Johnson-O'Malley and Impact Aid (PL 874) programs were collected on fiscal years 1970 through 1975 for this report. These data have been analyzed for purpose of this survey and to provide required evidence in order to support or test the proposition that such funds are essential for maintenance of a separate educational institution on the Red Lake Indian Reservation.

The uniqueness of the school district which is coterminous with the boundaries of the closed reservation lends itself to being limited to a single school district. Because of its being a closed reservation, Federal sources provide a substantial amount of revenue through the two major sources of revenue cited above.

The study is expected to be worthy of analysis since it involves a public school with an Indian enrollment of at least 835 students of Chippewa ancestry based on reservation land which has never been allotted since the land is held under its aboriginal title. The study is also limited enough to allow ample opportunity for an in-depth survey of revenue from the two major federal sources. It is also expected to be valuable in the sense that it presents a survey of one of the important concerns of the Red Lake Band of Chippewa Indians, the maintenance and development of an educational program on the Red Lake Indian Reservation.

The Red Lake Indian Reservation has a substantial number of Indian students which reuqire an ample amount of financial resources to support an educational program which is suitable to the needs and desires of the members of the Red Lake Band of Chippewa Indians. Without the assistance of the two major types of federal aid, there would be insufficient funds to operate an effective school program on the Red Lake Indian Reservation. The focus of the survey deals with the two major types of federal aid.

The two major sources of federal revenue contribute a significant percentage of the total receipts received by the Red Lake district. In addition state sources include transportation aid, endowment, income tax, nontaxable land sales tax distribution, Indian student aid, and lunch program. Other federal receipts include those derived from Titles I and II of the Elementary and Secondary Act, Title III of the National Education Defense Program, and provisions of the federal school lunch program.

Local, county, and onrevenue receipts represent an insignificant share of income in the Red Lake district. Thus, the problem studied has been limited to allow a reasonable in-depth study of the major revenue source on which the Red Lake district depends for the operation of its educational program. Because of the smallness of other kinds of revenue, these federal programs have an impressionable impact on the economic status of the reservation. Although only two sources of revenue have been surveyed, they have contributed a significant amount of revenue through Johnson-O'Malley funding and Impact Aid (PL 874) funding.

Reports on examination of Independent School District No. 38, the Red Lake School District, for fiscal years 1970-74 were available from audits made by Edward W. Brady, Ltd., Grand Forks, North Dakota, a Certified Public Accountant firm. For fiscal year 1975 a report made by the Holcomb, Knutson & Company, Certified Public Accountants, Bemidji, Minnesota, was available concerning the records of account also of the Red Lake Independent School District.

Also available were supportive data from the following agencies:

1. The Bureau of Indian Affairs
2. The State Department of Education

The data received from the two agencies confirmed the revenue reports from the various sources and specifically the Federal sources as they related to the present survey. The data received provided a cross-check on the accuracy of the information realized through the survey of the audit reports . Thus records were available for use in this study from the district audit reports, Bureau of Indian Affairs, and the State Department of Education.

Manageability in obtaining the data was restricted to records over a span of years during the 1970's, a total of six fiscal years. To make the study more manageable, one school district was surveyed in relationship to the two major federal aid programs that have historically had major impact on the educational program of this district.

In summary, the scope of the problem can be delimited as follows:

1. Two federal funding systems
   - a. Johnson-O'Malley (Act of April 16, 1934, as amended)
   - b. Impact Aid (PL 874) Title I of the Act of September 30, 1950, as amended
2. One school district which affects the Red Lake Band of Chippewa Indians, Minnesota Independent School District Number 38.
3. Survey of quantitative and fiscal data including allocation formulae for the two federal programs.
4. Fiscal years of 1970-75 for six years.
5. Analyze Federal funds which are received by these amounts, purposes and programs.
6. Compare or explore district allocations of the two programs against total budgets for the district.
7. Graphic figures and charts to focus the implication of the funds being surveyed in relation to other revenue.
8. Analysis of revenues versus expenditures.

The paramount concern of the study was to emphasize how heavily the Red Lake Indian Reservation relies on federal funding, namely Johnson-O'Malley and Impact Aid (PL 874), for much of the operational support for the educational program. The latter are dependent upon Congressional statutes which establish regulations and appropriations in both the Department of Interior and the Department of Health, Education, and Welfare. More specifically receipts depend greatly upon the rationale for the allocation of funds stemming from federal statutes.

CONTRIBUTION AND LIMITATION OF THE STUDY

Financing educational programs on Indian reservations has become increasingly a concern for many interested people: Indian parents, tribal leaders, and educators, as well as legislators and federal personnel who are charged with administering services to Indian tribes and Indians eligible for educational services. Great concern has been focused on the educational programs financed by the federal government for schools that have been established, developed, and expanded for members of Federally-recognized Indian tribes living on or near reservations or trust land. The Red Lake Indian Reservation is one of these reservations located in northern Minnesota in lake and timber country.

The study was designed to acquaint interested individuals with the Federal funding programs serving Indian reservation schools and specifically the Red Lake Indian Reservation. With the increased interest in educational programs on the part of the American people, the Congress, and tribal leaders, there is the willingness and support to participate in the direction of the schools that affect the progress and achievement of the educational program on the reservation.

With the background and information made available to educators and concerned leaders on the past and present stretching over only a period of six years, some steps could be made to improve the quality of the assistance provided and to encourage the most effective use of the funds provided. Efforts to strengthen the educational program of the reservation that serves 835 Indian children with interest and support for further progress of the educational program on the reservation can be a catalyst for greater progress and achievement in the educational program.

With the legislation mandating the revision of regulations that affect Indian reservations and their long-term financing, some review of the results to protect the interests and maintain the means of operational support is important at this time. The school district has enjoyed past support for thirty years from one source and nearly twenty years for the second source of funding.

A complete analysis of the financial affairs of the school district was beyond the scope of the study. It was limited to one Indian reservation whose boundaries are coterminous with the school district located in northern Minnesota.

The study involved selected financial data which providesthe major source of revenue for the Red Lake district. Because,district, local, and county revenue represent on an insignificant share of income in the Red Lake district, federal sources represent a significant portion of the financial support of the educational program on the Red Lake Indian Reservation.

ORGANIZATION OF THE STUDY

Chapter I has presented the basis of the study with respect to increasing the revenue for two federal funding sources, namely, the Johnson-O'Malley and Impact Aid (PL 874) for Independent School District No. 38 located on the Red Lake Indian Reservation.

Chapter II attempts to review the literature pertaining to two major sources of federal revenue for public schools that enroll Indian students on or near Indian reservations, namely, Johnson-O'Malley and Impact Aid (PL 874). Literature about the uniqueness of the Red Lake Indian Reservation and the characteristics of the Red Lake school district are also reviewed.

A description of the study involving the two major sources of revenue is presented in Chapter III as they pertain to the Red Lake district which is coterminous with the Red Lake Indian Reservation.

A somewhat more detailed statement describing the Red Lake Indian Reservation and the Red Lake School District is provided in Chapter IV.

Chapter V presents the major findings of the study involving data collected from various sources pertaining to the federal funding sources. The data include tables and figures involving the two major sources of revenue. Summaries of the major findings are also presented.

Chapter VI presents the summary, conclusions, and recommendations or implications based upon the study. The summary section contains a brief description of the problem, the research methodology, and the findings. Conclusions follow in the form of judgments or recommendations made by the author based on findings and implications from the conduct of the study.

SUMMARY OF CHAPTER

Chapter I was designed to present the basis for the study with respect to intensifying and improving federal funding sources of Indian reservation schools with special reference to one independent school district located on the Red Lake Indian Reservation. The chapter indicates the importance and validity of the problem involved in the study. The uniqeness of the survey comes from the basis for delimiting it to a single school district in analyzing the impact of two sources of federal funding that were the focus of the study. The latter were the Johnson-O'Malley and Impact Aid (PL 874) programs of federal assistance. The survey was limited to a period of six years including years 1970-75.

The statement of the problem pointed to the urgent need for federal funding from these two major federal funding sources to the operation of the school system on the Red Lake Indian Reservation. Basic assumptions to accompany the statement of the problem included the tenet that without support from these two sources, the survival of an educational institution on the reservation would be highly questionable.

The sources of information involved and the kinds of data that were available for the conduct of the survey were confirmed and collected from the school district, the Bureau of Indian Affairs, and the State Department of Education.

The organization of the study presented content of the six chapters that make up the study of the problem involving the survey of the sources of federal funding for the school district on the Red Lake Indian Reservation.

Chapter 2

REVIEW OF LITERATURE

The purpose of this chapter has been to review the literature particularly concerned with the two federal funding sources under study, namely the Johnson-O'Malley Act and the Impact Aid Act commonly known as PL 874. An attempt has also been made to limit the review to pertinent literature related to the specific aspects of federal support to reservation public schools which come under these two federal funding sources.

JOHNSON-O'MALLEY

An examination of the literature dealing with the Johnson-O'Malley Act reveals that the legislation was of general and permanent nature when enacted during the period of 1930 to 1936. It authorized the Secretary of the Interior to enter into contracts with states or territories for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through wualified agencies of such State or Territory.[1]

Literature concerning the Johnson-O'Malley source of public school support indicated that it was a result of general and permanent legislation. Cohen stated:

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[1] Johnson-O'Malley Act 48 Stat. 596, 25 U.S.C. 452.

> An important item of general and permanent legislation was the so-called Johnson-O'Malley Act (When originally introduced it was known as the Swing-Johnson bill) of April 16, 1934, (48 Stat. 596. Sec. 25 U.S.C. 452), authorizing the Secretary of the Interior to enter into contracts with states or terlitories[2]. . . .

The Act was an innovation as further described by Cohen:

> Another innovation is the Act of April 16, 1934 (Act of April 16, 1934, c. 147, 48 Stat. 596, amended by Act of June 4, 1936, 49 Stat. 1458, U.S.C., 452 - 456.), commonly known as the Johnson-O'Malley Act providing for federal-state cooperation. Under the terms of this legislation, moneys appropriated by Congress for Indian education may be turned over to "any State or Territory, or political subdivision thereof" or "any appropriate State or private corporation, agency, or institution" under a contract by which the recipient of federal funds undertakes to provide educational facilities in accord with standards established by the Secretary of the Interior to a specified number of Indian students. So far contracts in accordance with this act have been made with Arizona, California, Minnesota, and Washington.[3]

The Red Lake school district began its initial years of existence shortly after the above law was enacted. The boarding school was abandoned in 1934 which ended an era in which the boarding school had operated beginning in 1877.

After the closing of the boarding school, the Federal government continued its tuition plan of providing education for Indian children at Red Lake and Ponemah until 1936, when a state contract between the Bureau of Indian Affairs and the State Department of Education was executed. Anderson recently stated:

> The Red Lake Boarding School, now the teachers dormitory, was erected in 1877 and the Ponemah Boarding School, now the Elementary, in 1900 To care for non-Indians, the Unorganized Territory of Beltrami County established a public school at Redby In 1911 and one at Red Lake in 1912. When the boarding school was abandoned, the public schools began serving all children on the Reservation.
>
> ...The first contract provided $82,900 to be distributed by the State Department on the basis of need to schools enrolling children of Indian

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[2] Felix S. Cohen, Handbook of Federal Law (Albuquerque: University of New Mexico, 1971), p. 83.

[3] Ibid., p. 241.

blood. This contract has gradually increased until in 1949, a century after the origin of the Department of Interior, it amounted to $167,500 annually. In addition to the contract the Reservation schools are supported by state aids as are other public schools.

In 1942 the County Commissioners of Beltrami County upon petition of the County Board of Education, created an Independent School District of Red Lake Reservation, which classification it bears today.[4]

Public school districts with substantial Indian enrollments and Indian land within the district were eligible for special financial assistance through the Bureau of Indian Affairs under the Act of April 16, 1934, commonly called the Johnson-O'Malley Act.

Some public school districts on Indian reservations have insufficient funds to operate effective school programs even with State aid and general Federal aid to education programs. The Red Lake school district was one of these school districts to which the Bureau of Indian Affairs could provide funds to assure the operation of the school. In 1972 more than 430 public school districts with substantial enrollments receive Johnson-O'Malley funds from the Bureau of Indian Affairs.[5]

Johnson-O'Malley funds have been made available to states based on separate plans negotiated between the Bureau of Indian Affairs and the respective states, tribal corporations, or school districts, for the express purpose of supplemental Federal assistance for educating Indian children in public schools. These funds, in turn, have been administered by the States or through tribal corporations and distributed to local school districts. The Johnson-O'Malley Annual Report for Fiscal Year 1972 recently stated:

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[4] Mabel Anderson, "A Cursory Study of Red Lake Indian Reservation on Administration, Resources and Activities" (paper written for Library Science 302; Bemidji State Teachers College, Summer, 1953) p. 9.

[5] Bureau of Indian Affairs, United States Department of the Interior, Indian Education: Steps to Progress in the 70's, (Washington: Government Printing Office, 1973), p. 46.

> The Bureau of Indian Affairs takes the position that when financial hardship is caused by large areas of tax-exempt, Indian-owned land and Indian children in a district, financial assistance may be given to the State to enable it to fulfill its responsibility for the education of Indian children. In determining what constitutes hardship, the Federal Government looks (a) to the sources from which Indians are directly and indirectly contributing. From this information, if it develops that a burden does exist because of inadequate tax base resulting from Indian owned lands, a plan, operable with the framework of both State and Federal laws, for financially assisting the local districts in distress, is developed jointly by the Bureau of Indian Affairs and each respective State or tribal corporation entitled to assistance from the Bureau. This plan is the basis for determining amounts paid to the contracting agency and the distribution of these funds to the districts. By virtue of the fact that there exists no uniformity of State school laws, of State standards such as teachers' salaries, of sources of wealth, and of a multitude of other pertinent factors, plans for agencies receiving financial assistance are not uniformly drawn. Indian impact varies also from State to State. It can be expected that States with larger proportions of Indian population to their total population and larger areas of non-taxable, Indian-owned lands to the total land areas will experience greater burdens and thus receive more assistance than States with lesser impact.[6]

California, Washington, and Minnesota were some of the first states with which the Bureau of Indian Affairs entered into a Johnson-O'Malley Act contract.[7] The Johnson-O'Malley Act authorized Federal contracts with states and other political units to improve Indian education and welfare. Through the contract arrangements a specified sum was paid by the government and the state was held responsible for the education and welfare of Indians within its boundaries.

In earlier accounts of the Johnson-O'Malley Act during the 1940's, Adams stated:

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[6] Bureau of Indian Affairs, United States Department of the Interior, Johnson-O'Malley Annual Report Fiscal Year 1972, (Albuquerque: Division of Educational Assistance, 1972), pp. 7-8.

[7] Evelyn C. Adams, American Indian Education (Morningside Heights: King's Crown Press, 1946), p. 78.

> The provision of funds to maintain the Indian student in the public school, and the irrelevance of public school instruction to Indian requirements have been the chief difficulties. Inasmuch as Federal Indian land is tax exempt and there are many Indians who are not required to pay taxes, the use of Federal, state, and local funds for Indian public school students is legally limited. This problem has been met by the payment of Federal per capita fees calculated on current costs, contracts authorized by the Johnson-O'Malley Act of 1934, and special arrangements as in Oklahoma.[8]

For later accounts of the Johnson-O'Malley Act the Subcommittee Indian Education on Labor and Public Welfare recently stated in 1969:

> This Act authorizes the Secretary of the Interior to enter into contracts with States or territories for the education, medical attention, and social services of Indians. Contracts may be made with any State or Territory or political subdivision thereof or with any State University, college, or school, or with any appropriate State or private corporation, agency, or institution. With the enactment of the 1958 amendments to Public Law 81-874 allowing payments under the Johnson-O'Malley program and the impacted area program for basic educational costs, funds under the Johnson-O'Malley program became "supplemental". This essentially means that funds are given to local educational agencies when the Bureau of Indian Affairs considers the needs of Indian children as not being met under other Federal Programs.
>
> This Act provides the basis for payments to public schools for the education of Indian children, Payments are made for educational services and special services. The Act was amended in 1936 by Public Law 74-634 which specified colleges, universities, and educational agencies et cetera, as eligible parties for contracts. The requirement for an annual report to Congress was repealed by Public Law 86-533 on June 29, 1960.[9]

According to the 1970 U.S. Census, there were about 827,000 citizens who identified themselves as American Indians and Alaska Natives (Indians, Eskimos, and Aleuts). More than half of these people maintained a unique relationship with the Federal government enabling them to participate in a number of special Federal programs, including the program of assistance to Indians enrolled in public schools under the Johnson-O'Malley program.

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[8] Ibid., p. 82.

[9] U.S., Congress, Senate, Subcommittee on Indian Education of the Committee on Labor and Public Welfare, *The Education of American Indians A Compilation of Statutes*, 91st Congress, 1st Sess., October, 1969 (Washington: Government Printing Office, 1969), p.5.

This relationship was rooted in treaties between the Government and various Indian tribes and in the numerous laws enacted by the Congress for the benefit of Indians and Alaskan Natives.

The majority of American Indians in this group lived on Federal Indian Reservations or in rural Indian communities. In varying proportions, they have maintained their land bases, traditional cultures in language, religion, social organizations, and values in contrast to the demands of a modern society. Debo recently described the status of the Chippewas of the Red Lake Reservation as follows:

> The Chippewas of the Red Lake Reservation were somehow overlooked; they retained their swamp and timber, and in recent times they established a profitable fishing and fish-processing industry, while their forest is operated on a sustained-yield basis.[10]

The school district located on the Red Lake Indian Reservation was established with the support of the Johnson-O'Malley funds which have been from the beginning essential for the operation and existence of an educational institution on that reservation. The changes that have been made in the Code of Federal Regulations and recent federal statutes have drawn increased attention from Indian people about their effect on the Johnson O'Malley program. A report written by the Indian Education Resources Center recently stated.

> An Act authorizing contracting for certain services to be provided to eligible Indians, (the Johnson O'Malley Act), April 16, 1934, as amended by the Act of June 4, 1936, was implemented by Part 33, Title 25, Enrollment of Indians in Public Schools.
>
> Authority under this Act was quite broad, but the regulations in Part 33, Title 25, limited expenditures to eligible public school districts containing large blocks of non-taxable Indian-owned land and large numbers of Indian children.[11]

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[10] Angie Debo, A History of the Indians of the United States (Norman: University of Oklahoma Press, 1970), p. 257.

[11] Indian Education Resources Center, Assistance To Indians Enrolled in Public Schools: Johnson-O'Malley Regulations, (Albuquerque: Bureau of Indian Affairs, 1975) p. 1.

Until Fiscal Year 1975, the position of the Administration and the Congress has been that the Johnson-O'Malley program was intended for use of public school Indian children who lived on or near reservations.

The regulations as revised in 1957 stipulated that the program would be administered to accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxable reservation land and the presence of Indian children in need of educational services. The regulations were amended in 1974 and the distribution formula became more liberal and augmented the number of eligible Indian children regardless of whether they lived on or near reservation land. Thus, the revision of the regulations and manual under which the Johnson-O'Malley contracts are carried out, which began to make headway prior to 1974, resulted in the change which affected the traditional school support for educational services to Indian students living on or near reservations.

The regulations were again amended in 1975 when it was mandated by the Public Law 93-638, 88 Stat. 2203, the Indian Self-Determination and Assistance Act.[12] This Act has two titles; Title I deals with contracting with the Secretary of Interior or Health,Education and Welfare for the delivery of services to Indians. Title I does not make any new law, rather it consolidates and codifies the authority to contract found in the Snyder Act, Johnson-O'Malley, and the Buy Indian Act. In the past, there have been doubts about the extent of the government's power to contract for programs not found in the Johnson-O'Malley Act, but these doubts have been resolved by a mandate to contract. Title I also provides for new regulations for contracting, establishes criteria for administrative review of any Secretarial decisions concerning contracting and allows the transfer of federal employees to contractors.

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[12] Indian Self-Determination and Education Assistance Act, 88 Stat. 2203 (January 4, 1975).

Title II amends the Johnson-O'Malley Act by requiring parental participation for Johnson-O'Malley contracts, unless the contract is with an Indian controlled school district. In addition, Congress asked for a study of federal spending for Indian education to be submitted to Congress by October 1, 1975; authorized $35,000,000 for new school construction; and authorized contracting for tribally operated schools.

Title II, The Indian Education Assistance Act, is a refinement of Title I with respect to contracting for education purposes pursuant to the Johnson-O'Malley Act. Education contracting will be governed Title I, but also by Title II.

The author had the distinct priviledge of testifying in relation to the Act in the oversight hearing which was held on October 20 and 28, 1975, on rules and regulations promulgated to implement Public Law 93-638, the Indian Self-Determination and Education Assistance Act. of Interior and Health, Education, and Welfare were authorized to make regulations and were given a strict timetable in which to issue the regulations. By October 4, 1975, the final regulations were published in the Federal Register sixty days prior to their effective date.

Deputy Commissioner of Indian Affairs Harley Frankel handled the regulations by heading a Bureau of Indian Affairs Task Force to draft

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[13] U.S., Congress, Senate, Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, Implementation of Public Law 93-638, the Indian Self-Determination and Education Assistance Act, Hearing, 94th Congress, 1st Sess., October 20 and 28, 1975 (Washington: Government Printing Office, 1976). pp. 260 - 265.

the regulations. Four congressionally imposed deadlines were used for the drafting of these regulations.

Thus the Act which further amended the Johnson-O'Malley Act changed the regulations after they had already been amended in 1974. Within two years the Johnson-O'Malley program was undergoing considerable change by both the administrative source and the legislative source. The effect that these changes had on the educational program of school districts which were traditionally dependent on the Johnson-O'Malley source of revenue for school support have yet to be forseen or appraised.

IMPACT AID (PL 874)

The emergency educational and social services programs developed during the depression days of the 1930's laid the groundwork for the recognition of definite federal fiscal responsibility to provide such programs whenever local units of government were financially unable to do so.

A brief overview of Public Law 874 from its beginning indicates that programs like the Civilian Conservation Corps, Federal Emergency Relief Act, National Youth Administration, Public Works Administration, and Lanham Act were related to the educational field in that they provided forms of education or needed schools and college buildings as well as the maintenance and operation of school programs in special instances.[14]

Under the Lanham Act passed in 1940, the federal government provided aid to local governments for the construction of needed school facilities and the maintenance and operation of school programs strained by an influx of military and defense workers. This program came into full operation in 1941 and provided for federal aid on a matching basis. However, when a school district was unable to make the necessary matching contribution, and the construction and maintenance of such a school facility was declared to be essential in terms of the sucessful prosecution of the war, the Federal Works Administrator was authorized to build and operate such facilities wholly at federal expense. These facilities, once constructed, were leased to the school districts at a nominal rental fee for operation.

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[14] Paper on "A Brief Overview of the beginning of Public Laws 874 and 815 (Wayne County Intermediate School District)", report of William Simmons, December, 1975.

In 1946 following the end of World War II, federal aid for the construction of public schoools in federally impacted areas was discontinued under the Lanham Act. The U.S. Congress assumed it would not be necessary to construct additional school facilities in areas formerly concerned with a primary manufacturing activity or troop-training activity directed at successful prosecution of the war effort.

Maintenance and operation support under the Lanham Act was continued, however, until 1949 through a series of year-to-year extensions which provided for financial aid on a limited basis through special appropriations. During the period of reconversion, the federal government recognized by special legislation that many of the areas impacted during the war years were still in serious condition as the result of the activities of the federal government.

School superintendents, local boards of education, and professional educational groups throughout the nation voiced the need for some kind of over-all federal legislation that would provide a program similar to the type of program offered previously under the Lanham Act.[15]

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[15] Ibid., p. 2.

Congressional committees studied a number of problems related to federal aid to education during the period 1946 to 1950. Several bills were reported to Congress; however, no specific new legislation was enacted.

School representatives from all parts of the nation appeared before Special Investigating Subcommittees of the House Committee on Education and Labor and reported that huge increases in enrollment were directly traceable to the activities of the federal government.

The following statement from one of the Committee reports embodies the views of the Committees about the need for federal legislation to alleviate the school district's burden:

> This overburdening of local school agencies results from the fact that the Federal Government is conducting many different kinds of activities essential to the defense or general welfare of the Nation. It builds planes, guns, ships, and tanks and produces other material for defense purposes. It also builds dams, power projects, and other public works. It still owns hundreds of dwelling units constructed for military personnel or civilian workers during World War II and is now constructing thousands of additional dwelling units for military and civilian personnel. Large Army camps, naval bases, and airfields are operated for training of military personnel and for defense purposes. Hundreds of thousands of acres of land have been acquired for national parks, national forests, or reclamation and flood-control projects. In other areas there are thousands of acres of land in Indian reservations or held as public domain. Experimental work with guided missiles and atomic energy requires very large project operations in some areas. In short, the United States has, in the prosecution of essential defense and domestic activities, become an industrialist, a landlord, or a businessman in many communities of the Nation, but does not accept the responsibility of the normal citizen in a community, becaus property under Federal ownership and control generally is not subject to State or local taxes.
>
> In addition to the loss of tax revenue from these federally owned properties, local communities adjacent to the Federal projects are seriously affected by large increases in population resulting from these Federal activities. Some of these Federal projects employ tens of thousands of people, part of whom live on the nontaxable Federal= property, while the remainder live in the adjacent communities. Other installations employ only a small number of people or none at all. In some cases the population increase was sudden and substantial, while in others it has been gradual over a period of years. As a result problems varying in extent and complexity are created by these Federal activities

for local government agencies in the provision of public school facilties.[16]

The Congress, in September, 1950, passed into law Public Law 815 to provide school construction aid to areas affected by federal activities. and Public Law 874 to provide operating expenses of school districts affected by federal activities. These two laws are based on a philosophy that recognizes the role of the federal government as a responsible agent who, though not subject to local taxation, can and does provide funds to local school districts when the activities of the government place and undue burden on the financial resources of a local community. The purpose of Public Law 815 and Public Law 874 was to reimburse states and their local school districts for costs of schooling brought about by federal activities which have reduced potential tax revenues or increased excessively the number of children to be educated.

The Impact Aid program was created by the Congress in 1950 to aid those school districts which, because they include Federal property, have a reduced tax base which in turn inhibits their ability to provide suitable free public education to pupils residing there. These properties include military bases; U.S. Forest Service, National Parks Service and General Services Administration buildings and property; transportation facilities, such as roads, airports and waterways; and, since 1960, Indian reservations. Generally, a school district's eligibility for funds is conditioned on the presence of land on which school children reside and/or on which their parents are employed. In Fiscal Year 1970, for districts receiving Impact Aid funds, these pupils nationwide comprised 11 per cent of total district enrollments, while Impact Aid funds comprised three per of the district's budget.

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[16] Ibid., p. 4.

To qualify, a district must have (a) at least 400 pupils whose parents live and/or work on Federal property, or as many as three per cent of the district's average daily attendance (ADA), whichever is less, and (b) at least 10 such pupils. A district's maximum payment is set by legislative formula which follows:

The District's Maximum Payment = ADA of pupils whose parents live and work on Federal property (plus)

1/2 ADA of pupils whose parents live or work on Federal property (times)

Rate of payment[17]

The rate of payment is the cost of educating pupils in comparable school districts in the State less the amount of State aid available in the applicant district for these children. Comparable districts are identified by the State and the U.S. Office of Education.

Basically, the parts that are relevant to the public school education of American Indians are due to: (1) reduction in local revenue by reason of acquisition of real property by the United States, and (2) education of children who reside on Federal property or reside with a parent employed on Federal property. A school district may be eligible if the number of children in ADA is at least 10 and at least 3 per cent of the total average daily attendance (ADA), which is determined in accordance with State law and practice. By definition, the term means the aggregate days of attendance at the school in a given school year divided by the number of days the school was actually in session.

Susan Smith and Margaret Walker, Federal Funding of Indian Education: A Bureaucratic Enigma (Washington, D.C.: Bureau of Social Research, Inc., 1973), pp. 96 - 97.

Public Law 81-874 legilates the specific requirements under which children are eligible for educational aid in relation to the area of residence of Indian children and where parents of Indian children are employed.[18] Most recently the rules and regulations pertaining to PL 81-874 have been amended by PL 93-380 which has changed the rationale for computing entitlements for Indian children living on Indian lands. All children living on Indian lands are to be considered in the same subcategory as "A" children, those whose parents are in the uniformed services.[19]

A Bureau of Indian Affairs publication revealed that prior to 1958, the Johnson-O'Malley program was a basic Federal aid program specifically designed to assist public schools districts to educate Indian children from reservations and other Indian-owned and consequently tax-exempt land areas. On August 12, 1958, Public Law 81-874, administered through the Department of Health, Education, and Welfare, which provided assistance to public schools, was amended to include assistance for educating Indian children.[20] PL 81-874 further indicated that this broader-based Federal aid program met most of the basic financial needs of eligible school districts.

PL 93-380, the Educational Amendments of 1974, greatly revised the entitlement and payment structure of PL 874 and is of major importance and benefit to American Indians. All Indian children living on Indian lands were recognized as Category A children. Until this amendment, children whose parents worked off Federal property were considered "B" children.

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[18] Johnson-O'Malley Annual Report of Fiscal Year 1972 (Bureau of Indian Affairs), report of Brice L. Lay, Chief, Division of Educational Assistance, 1972. Albuquerque, New Mexico, pp. 81-82.

[19] Federal Register, Vol. 40, No. 235, Department of Health, Education, and Welfare, School Assistance, Federally Affected Areas, p. 57042.

[20] Ibid., p. 7.

Through Fiscal Year 1975, "A" children entitlements are 100 per cent times the local contribution rate times the number of "A: children. "B" children entitlements were determined by the same method but assigned a 50 per cent rate instead of 100 per cent.

In addition to declaring all Indian children on reservations to be "A" children for funding purposes, the method of computing the money actually received by a district was amended to increase the amount of money available for districts educating Indians. "Entitlement" means the maximum dollar amount which a school district receives. When appropriations are insufficient to provide full funding, computed entitlements will be greater than actual payments. For the last few years, appropriations have been insufficient for full funding of all "A" and "B" entitlements. However, due to the recognition of the greater Federal responsibility existing for "A" children, and the severe impact of such reductions on heavily impacted areas, appropriation acts have provided for graduated payment levels dependent on the quality of Federal connection and quantity of Federal impact.

SUMMARY

Over the years, the purpose of PL 874 was to provide payments in lieu of taxes because of Federal ownership of property and the impact of Federally connected students. With the amendments of 1974, American Indians, together with military children, become the top priority recipients of PL 874 funds.

Indian children, treated advantagiously like military children within Public Law 93-380 were provided with an additional benefit comparable to that of dependent children with the military. An amendment entitled any handicapped military child or child living on Indian land to 150 per cent of the usual rate, if the applicant school district provided a program to meet the special educational needs of handicapped children.

An amendment which will undoubtedly affect some districts enrolling American Indian children, is the new state aid equalization provision. Before this amendment, states were prohibited from considering Impact Aid payments when determining eligibility for State aid or the amount of such aid to local educational agencies. This was intended to prevent states from unfairly replacing State aid with Impact Aid.

In contrasting the two sources of federal revenue used in the support of education of Indian children, the Johnson-O'Malley program which began in the 1930's was the source of operational support for public school districts educating American Indians on or near reservations. The Red Lake school district consistently has been a recipient of this federal revenue and during the changing of the regulations, has experienced substantial decreases in the amount of revenue partially because of changes in the accompanying regulations.

Since 1958 when districts educating American Indian children became eligible for Impact Aid funds for general aid to education, Red Lake has also been a recipient of this source of revenue which has been used in the support of an educational program for the education of its students. For the Johnson-O'Malley program, new regulations went into effect on September 20, 1974, bringing several important changes.

The Indian Self-Determination and Education Assistance Act again amended the Johnson-O'Malley regulations. Although large blocks of nontaxable land was no longer to be a requirement of eligibility, the focus was still on reservation Indians, their communities, and the public schools they attend. One problem for the Red Lake school district has been the decreasing amount of basic support funds that result from the implementation of this statute.

The strong emphasis is on the use of Johnson-O'Malley funds for supplementary programs to meet special Indian educational needs. Basic support, according to the new legislation, is in process of being phased out within three years.

An interesting note in regard to PL 874, the legilation that is supposed to provide operational support to public school districts educating American Indian students, is the fact that of the four sections of PL 874 which authorize assistance to educational agencies, three were extended through Fiscal Year 1978 with only minor amendments.

Thus, the irony of the reduction of operational support for reservation schools is exemplified by the comparison of the two acts of legislation: Johnson-O'Malley which is a permanent kind of Act which has assisted Indian reservations in the education of Indian children and the PL Impact Aid Act, which has been given renewed life every three years offers general aid for operational support. In the past Indian schools have experienced Congressional appropriations which did not fully fund the entitlements. Red Lake school district is one of the traditional school districts which has participated in these programs from the beginning, shortly after going through a transistional phase of converting from a Federal boarding school system operated by the Bureau of Indian Affairs to its present Independent School District No. 38 organization, continues to be affected by the rules and regulations of Johnson-O'Malley and Impact Aid sources of revenue.

Chapter 3

DESCRIPTION OF THE STUDY

Selected financial data were collected which had a bearing on the study, mainly the two sources of federal funding, Johnson-O 'Malley and the Impact Aid (PL 874) type of funding for the Red Lake Independent School District. The reports of two different auditing firms were incorporated into the study using certain information about the latter which was gathered and organized into table form illustrating financial data in relation to receipts by source for fiscal years 1969 - 70, 1970-71, 1971-72, 1972-73, 1973-74, and 1974-75. Thus, the present has involved the financial data derived from audit reports and organized into table form for the Red Lake School District.

Reports from two auditing firms, namely, Edward W. Brady & Co., Certified Public Accountants, Grand Forks, North Dakota, and Holcomb, Knudson & Co., Certified Public Accountants, Bemidji, Minnesota, were used for the first five years (1969-1974) for the initial firm and one year (1974-75) for the latter firm. This was due to a change in the auditing firms.

Data were obtained from Exhibit "D" entitled "Estimated Revenues Realized and Expended Appropriations General Fund for the Fiscal Year 1970". Only revenue which was applicable to the survey was obtained from the exhibits of Independent School District No. 38, Red Lake, Minnesota. Information received from these exhibits was transformed into tabular form for the selected six fiscal years. This display of fiscal information dealing with revenue from federal sources has become the major focus of the present study. The tables and figures including graphs and pictorial representations have been presented as evidence upon which inferences and conclusions could be based.

The collection and analysis of the data on the amount of Johnson-O'Malley and Impact Aid (PL874) revenue has been organized into tables according to present information by year for fiscal years 1970 through 1975. Basically the information obtained was transferred from auditor exhibits with the heading "Estimated Revenue Realized and Expended Appropriations - General Fund," designated as Exhibit "D" within the "Report on Examination of Independent School District No. 38., Red Lake, Minnesota."

As shown in Table I Johnson-O'Malley revenue for Fiscal Year 1970 revealed $278,965 or 29.4 percent of the $947,131 in Total Revenues realized for Fiscal Year 1970. For the sake of brevity, only selected data have been used for illustrative purposed to present data in quantitative units for analysis.

Also in Table I Public Law 874 revenue for Fiscal Year revealed $233,398 or 24.6 per cent from Impact Aid when contrasted with Total Revenues for Fiscal Year 1970 or $947,131.

The school year 1970 thus totaled half of the approximate million dollars in total revenues received from these two federal sources.(54.0 per cent) The total amount appropriated was less than the overall total of $857,617 received for Fiscal Year 1970.

Table I shows total revenues for Johnson-O'Malley funding and Impact Aid (PL 874) funding for Fiscal Year 1970. Also shown is a contrasting quantity of Total Revenues and an amount representing Total Appropriations, the amount actually expended during the School Year for 1970.

Some of the accounts for which the appropriations were expended were as follows: Administration, Instruction, Attendance and Health Services, Pupil Transportation, Operation of Plant, Maintenance of Plant, Fixed Charges, Community Services, Capital Outlay, Expenditures to Other Minnesota School Districts, Federal Programs, and Abatements.

Table I

REVENUES REALIZED FROM JOHNSON-O'MALLEY PROGRAM AND IMPACT AID (PL 874) FEDERAL FUNDING PROGRAM - Fiscal Year 1970

Revenue	Realized
Johnson-O'Malley	$ 278,965
Impact Aid (PL 874)	233,398
Total Revenue	947,131
Total Appropriation	857,617

SOURCE: Edward W. Brady & Co. Certified Public Accountants

It is interesting to note that in cross-checking the receipts by source with data from the Minnesota Departemnt of Education the following receipts are recorded:

Johnson-O'Malley	$ 276,650
Impact Aid (PL 874)	188,056
Total Receipts	936,204

SOURCE: Minnesota Department of Education

The difference in the receipts by source for 1969-70 may be attributed to the fact that the financial report for the 1969-70 fiscal year may have been made independently of the annual audit of the financial records of the school district and did not include all of the same items.

As shown in Table 2 Johnson-O'Malley revenue for Fiscal Year 1971 revealed $324,617 or 29.8 per cent of the $1,088,794 in Total Revenues realized for Fiscal Year 1971.

Also in Table II Public Law 874 revenue for Fiscal Year 1971 $187,932 or 17.2 per cent from Impact Aid when contrasted with Total Revenues for Fiscal Year 1971 or $1,088,794.

Total revenues exceeded a million dollars for the first time for the Fiscal Year 197 . The total amount appropriated was less than the overall total of $1,088,794 received for Fiscal Year 1971.

Table 2

REVENUES REALIZED FROM JOHNSON-O'MALLEY FUNDS AND IMPACT AID (PL 874) FUNDS BY INDEPENDENT SCHOOL DISTRICT NO. 38 RED LAKE, MINNESOTA, FOR FISCAL YEAR 1971

Revenues	Realized
Johnson-O'Malley	$ 324,617
Impact Aid (PL 874)	187,932
Total Revenues	1,088,794
Total Appropriations	1,005,564

SOURCE: Edward W. Brady & Co., Certified Public Accountants

As shown in Table 3 Johnson-O'Malley revenue for Fiscal Year 1972 revealed $287,415 or 20.0 per cent of the $1,436,193 in Total Revenues realized for Fiscal Year 1972. It is interesting to note that the Johnson-O'Malley revenue for this fiscal year decreased compared to the previous 1971 Fiscal Year.

Also in Table 3 Public Law 874 revenue for Fiscal Year 197 revealed $402,114 or 27.9 per cent from Impact Aid when contrasted with Total Revenues for Fiscal Year 1972 or $1,436,193.

Total Appropriations for Fiscal Year 1972 amounted to $1,065,219 The total amount appropriated was substantially less than the total revenues received for Fiscal Year 1972.

Table 3

REVENUES REALIZED FROM JOHNSON-O'MALLEY FUNDS AND IMPACT AID (PL 874) FUNDS BY INDEPENDENT SCHOOL DISTRICT NO. 38, RED LAKE, MINNESOTA, FOR FISCAL YEAR 1972

Revenues	Realized
Johnson-O'Malley	$ 287,415
Impact Aid (PL 874)	402,114
Total Revenues	1,436,193
Total Appropriations	1,065,219

SOURCE: Edward W. Brady & Co., Certified Public Accountants

As shown in Table 4 Johnson-O'Malley revenue for Fiscal Year 1973 revealed $416,127 or 25.4 per cent of the $1,637,724 in Total Revenues realized for Fiscal Year 1973. It is interesting to note that the Johnson-O'Malley revenue for this fiscal year increased compared to the previous 1972 Fiscal Year.

Also in Table 4 Public Law 874 revenue for Fiscal Year 1973 revealed $458,375 or 27.9 per cent from Impact Aid when contrasted with Total Revenues for Fiscal Year 1973 or $1,637,724.

Total Appropriations for Fiscal Year 1973 amounted to $1,426,833. The total amount appropriated was less than the overall total of $1,637,724. received for Fiscal Year 1973.

The school year 1973 totaled over half of the total revenues received from these two federal sources. (53.3 per cent) The total amount appropriated was less than the overall total revenues received for the year.

Table 4

REVENUES REALIZED FROM JOHNSON-O'MALLEY FUNDS AND IMPACT AID (PL 874) FUNDS BY INDEPENDENT SCHOOL DISTRICT NO. 38, RED LAKE, MINNESOTA, FOR FISCAL YEAR 1973

Revenues	Realized
Johnson-O'Malley	$ 416,127
Impact Aid (PL 874)	458,375
Total Revenues	1,637,724
Total Appropriations	1,426,833

SOURCE: Edward W. Brady & Co., Certified Public Accountants

As shown in Table 5 Johnson-O'Malley revenue for Fiscal Year 1974 revealed $233,136 or 17.3 per cent of the $1,342,187 in Total Revenues realized for Fiscal Year 1974. It is interesting to note that the Johnson-O'Malley revenue for this fiscal year decreased compared to the previous 1973 Fiscal Year.

Also in Table 5 Public Law 874 revenue for Fiscal Year 1974 revealed $212,853 or 15.8 per cent from Impact Aid when contrasted with Total Revenues for Fiscal Year 1974 or $1,342,187.

Total Appropriations for Fiscal Year 1974 amounted to $1,511,790. The toal amount appropriated was more than the overall total of $1,342,187 received for Fiscal Year 1974.

Both Johnson-O'Malley and Impact Aid (PL 874) funds decreased sharply compared to Fiscal Year 1973 while totaling about one-third of the Total Revenues received. (33.1 per cent)

Table 5

REVENUES REALIZED FROM JOHNSON-O'MALLEY FUNDS AND IMPACT AID (PL 874) FUNDS BY INDEPENDENT SCHOOL DISTRICT NO. 38, RED LAKE, MINNESOTA, FOR FISCAL YEAR 1974

Revenues	Realized
Johnson O'Malley	$ 233,136
Impact Aid (PL 874)	212,853
Total Revenues	1,342,187
Total Appropriations	1,511,790

SOURCE: Edward W. Brady & Co., Certified Public Accountants

As shown in Table 6 Johnson-O'Malley revenue for Fiscal Year 1975 revealed $264,092 or 14.4 per cent of the $1,829,918 in Total Revenues realized for Fiscal Year 1975.

Also in Table 5 Public Law 874 revenue for Fiscal Year 1975 revealed $447,458 or 24.5 per cent from Impact Aid when contrasted with Total Revenues for Fiscal Year 1975 or $1,829,918.

Total Appropriations for Fiscal Year 1975 amounted to $2,100,718. The total amount appropriated was more than the overall total of $1,829,918 received for Fiscal Year 1975.

It is interesting to note that during Fiscal Year 1975 Total Appropriations exceeded Total Revenues by an amount of $270,800. Thus, in the latter two fiscal years of this study, total appropriations exceeded total revenues in both years.

Table 6

REVENUES REALIZED FROM JOHNSON-O'MALLEY FUNDS AND IMPACT AID (PL 874) FUNDS BY INDEPENDENT SCHOOL DISTRICT NO. 38, RED LAKE, MINNESOTA, FOR FISCAL YEAR 1975

Revenues	Realized
Johnson-O'Malley	$ 264,092
Impact Aid (PL 874)	447,458
Total Revenues	1,829,918
Total Appropriations	2,100,718

SOURCE: Holcomb, Knudson & Co., Certified Public Accountants, Bemidji, Minnesota

As shown in Table 7, the percentages of funds from Johnson-O'Malley and Impact Aid (PL874) compared to Total Revenues are indicated by Fiscal Years 1970 through 1975. Percentages have decreased significantly for Johnson-O'Malley funds with Table 7 revealing a high percentage of 29.8 for Fiscal Year 1971 and a low percentage of 14.4 for Fiscal Year 1975.

Also in Table 7 Public Law 874 revenue decreased to a lesser extent with a high percentage of 27.9 for Fiscal Year 1973 to a low percentage of 15.8 in Fiscal Year 1974.

For the six fiscal years, Johnson-O'Malley funds averaged 22.7 per cent of the Total Revenue received during Fiscal Years 1970 through 1975. Public Law 874 revenue averaged 23.0 per cent of the Total Revenue during Fiscal Years 1970 through 1975.

Table 7

PERCENTAGES OF JOHNSON-O'MALLEY FUNDS AND IMPACT AID (PL 874) FUNDS CONTRASTED WITH TOTAL REVENUES REALIZED BY INDEPENDENT SCHOOL DISTRICT NO. 38, RED LAKE, MINNESOTA, FOR FISCAL YEARS 1970 THROUGH 1975

Fiscal Year	Johnson-O'Malley %	Impact Aid (PL 874) %
1970	29.4	24.6
1971	29.8	17.2
1972	20.0	27.9
1973	25.4	27.9
1974	17.3	15.8
1975	14.4	24.5

As shown in Table 8, the percentages of Total Appropriations compared to Total Revenues are indicated by Fiscal Years 1970 through 1975. Percentages contrasting Total Appropriations and Total Revenues have increased significantly with Table 8 revealing a low 74.2 per cent for Fiscal Year 1972 compared to a high 114.8 per cent for Fiscal Year 1975.

Table 8 reveals that Total Appropriations were less than the Total Revenues in the first four fiscal years of 1970 through 1973 while for the last two fiscal years of 1974 and 1975 the Total Appropriations exceeded the Total Revenue 12.6 and 14.8 per cent. Thus, Table 8 organizes the data for Total Appropriations and Total Revenues to indicate whether the Total Appropriations were more, stayed the same, or were less than Total Revenues.

Table 8

PERCENTAGES OF TOTAL APPROPRIATIONS COMPARED TO TOTAL REVENUES FOR INDEPENDENT SCHOOL DISTRICT NO. 38, RED LAKE, MINNESOTA, FOR FISCAL YEARS 1970 THROUGH 1975

Fiscal Year	Total Appropriations	Total Revenue	Percentage Comparison
1970	$ 857,617	$ 947,131	90.5
1971	1,005,564	1,088,794	92.3
1972	1,065,219	1,436,193	74.2
1973	1,426,836	1,637,724	87.1
1974	1,511,790	1,342,187	112.6
1975	2,100,718	1,829,918	114.8

SUMMARY

Two federal funding sources of education aid have been surveyed from accountant reports from two Certified Public Accountants firms, namely, Edward W. Brady & Co., Grand Forks, North Dakota, and Holcomb, Knudson & Co., Bemidji, Minnesota. The latter firm audited the school's annual financial records for Fiscal Years 1970 through 1974. The former firm did the audit for Fiscal Year 1975 for Independent School District No. 38. Two different firms thus provided the sources of data collected and tabulated in the present Chapter 3.

The existence of some variance of terms between the two firms should be noted but careful analysis of the terminology used in the two reports was coordinated so that the Tables as presented herein are simillar in content. Total Receipts was used for Holcomb, Knudson & Co. audit instead of Total Revenues as used by the Edward W. Brady & Co. audits. Likewise, Total Disbursements was used by Holcomb, Knudson & Co. as the counterpart of Total Appropriations used by Edward W. Brady & Co.

Revenues realized from Johnson-O'Malley funds and Impact Aid (PL 874) were the two most significant sources of data ,that were gathered from the accountants' reports of two Certified Public Accountants firms. In relation to the latter types of information Total Revenue and Total Appropriation data were also obtained and included in the tables for purposes of comparison. The opportunity to contrast the relationship of appropriations and revanues and also the contrast of disbursements and receipts were noteworthy in this study.

Thus, data concerning two important sources of educational aid to Independent School District No. 38, located on the Red Lake Indian

Reservation, has focused on Johnson-O'Malley and Impact Aid (PL 874) sources of funding. Total income as well as total expenditures were also noted in contrast to the data that was collected for the two types of Federal aid that this study was about. The over-all data was organized and arranged in tables to present the financial information as clearly and logically as possible.

Eight tables concerned with the fiscal years of 1970 through 1975 make up the heart of the data that is presented in the study. The purpose of the information in table form is to present information of two federal finance systems that are important to the education of nearly 10000 children that reside on the Red Lake Indian Reservation and to show the implications that these two sources of federal funding have on the services dealing with the educational program for the members of the Red Lake Band of Chippewa Indians whose home is the Red Lake Indian Reservation.

Chapter 4

THE ILLUSTRATIVE SETTING OF THE RED LAKE SCHOOL DISTRICT

The Red Lake School District, an independent public school district coterminous with the Red Lake Indian Reservation, is unique. All of the 637,000 acres of land, held communally by the Band, is tax exempt. School support depends almost exclusively on state and federal aids. Nearly all adults and children in the school district are of Chippewa Indian ancestry. These characteristics require a system of finance that is sensitive and responsive to basic economic conditions and which take into account the unique characteristics and financial needs of the school district.

EARLY DEVELOPMENT

The area served by Independent School District No. 38 has a rich and dramatic heritage. During the early 1700's, the area was inhabited, however, by the present inhabitants, the Chippewa (Ojibwa). Permanent villages were established when fur traders settled on the lake. In 1975, the first post office in Beltrami County was established at Red Lake.

The development of educational services has been a part of Red Lake history. The first school on the reservation was a boarding school established at Red Lake in 1877. Later, a second boarding school was built at Ponemah. Public education began in Redby in 1908 with the opening of a public elementary school. The present independent school district developed in the 1930's first as part of Beltrami County Unorganized

District later attained the independent school district status that it has now in the early 1940's

These historical factors combine to make the Red Lake school district unique in many ways. Its population is ethnically homogeneous; nearly all adults and school children are of Indian ancestry. Because the Red Lake Indian Reservation is the home of the members of the Red Lake Band of Chippewa Indians, the combination of many factors challenge the members of the Band to strive further and build a better educational program for the unique needs of the Red Lake students.

CURRENT OPERATION

The school district currently continues to operate two elementary schools and one secondary school. The elementary schools include a K-6 primary unit in Ponemah and a K-6 building in the village of Red Lake. The secondary school, serving grades 7-12, house s a comprehensive program and shares a 15-acre site with the Red Lake Elementary School.

St. Mary's Mission School, a private school in the Red Lake school sistrict, is also located in the village of Red Lake. At the present time its enrollment figures are slightly over 150 in grades 1-6. Grades 7-8 were transferred to the public school system during the 1973-74 school year.

The over-all enrollment for the Red Lake school district was 902 pupils in grades K-12 with 64 certified teachers employed by the school system during the 1975-76 school year. Enrollment projections indicate that elementary enrollments are expected to decrease rather slowly but these figures should be reviewed as additional data become available. Latest enrollment figures indicate a stabilization with a slight increase for the next few years.

The educational program appears to be very traditional in terms of organization and curriculum content. The organization for instruction is basically a K-6-6 plan.

The elementary program uses a modified self-contained classroom approach with specialists to teach remedial reading, music, and physical education. Individualized instruction is emphasized, having had the support of experimental learning projects in the past.

The secondary program is based on a traditional Carnegie unit organization using a six-period day. The course of study in grades 7-9 is relatively fixed. In grades 10-12 the number of elective courses increases each year. Vocational education courses are offered as well as general and college preparatory programs.

A recent research project, conducted by the Midwest Research Institute, pointed to the need for evaluation of the performance of the schools. It furhter indicated that the results of the Minnesota Scholastic Aptitude Tests (SAT) showed that Red Lake was one of the bottom 15 school distircts in Minnesota.[21]

AVAILABLE RESEARCH FINDINGS

Students in the public schools at Red Lake are part of that statistic; they are also part of statistics that show that Indian children and youth, on the average, do less well than other children on tests of reading, arithmetic and other school subjects.

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[21] Report on Findings of a Community Survey to Identify the Educational and Management Goals and Objectives of Members of the Red Lake School System (Midwest Research Institute, Minneapolis, Minnesota) by Joseph M. Reid, the Project Leader, and Ms. Tamra L. Sparks, Technical Assistant, May 14, 1976.

The main focus of the research undertaken by the Midwest Research Institute was concern about the leadership of the district and reservation who wanted the children who attend schools on the Red Lake Indian Reservation to receive the best possible education. The report sets forth the findings of a community survey conducted in the Red Lake School District to identify the educational and management goals of the district's parents, guardians, administrators, teachers, and students. The purpose of the report was to provide information for those who have a special interest in the outcome of the district's educational as needed to refine, clarify, and expand the school district's current statement of goals and objectives.

With confidence in community support for its revised statement of goals and objectives, the school board and the school community as represented by parents, guardians, students and staff should be able to push forward those elements among the goals and objectives that are already in place and to implement those additional goals and objectives that are not.

Thus, the foregoing illustrates concern for the educational and social well being of the youth by the reservation community in providing impetus and support for the latter survey.

Another research report on the Red Lake school district indicated that little evidence of research findings were available about pupil achievement or other criteria of pupil performance.[22] The study team found no dropout, follow up, or grade-level achievement studies. Information of this kind is consequently among high priority needs for self-evaluation and planning for program development or expansion.

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[27] An Educational Inventory for Independent School District No. 38, Red Lake, Minnesota (Bureau of Field Studies and Surveys, College of Education, University of Minnesota) by Charles H. Soderberg, Director, April, 1971.

Basically, the few research projects that have been implemented on the reservation on educational problems, have shown great interest and concern in improving the educational services on the Red Lake Indian Reservation. The flurry of the previous research papers points this out.

SUMMARY

The Red Lake School District located on the Red Lake Indian Reservation is unique. Since the establishment of the reservation, educational services for the members of the Red Lake Band of Chippewa Indians have been provided by various agencies including missionaries, the Bureau of Indian Affairs, and through the medium of an independent school district organized much like other independent school districts in the State of Minnesota.

Like many or all school districts, the Red Lake district is not without its financial problems. With over 900 students enrolled in the entire district, the basis for any research or survey should be the identification of implications for the well being and education of the students involved in the study. The fact that the students involved live on one of the seven Chippewa Indian Reservations in Minnesota should stir the imaginations and desires of the individuals who are responsible for the implementation of laws and their concommitant rules and regulations promulgated which affect the financing of education for Indian children and youth. With increased understanding of the diverse nature of this single school district in the State of Minnesota that enrolls almost all Chippewa Indian students, a more unified and broader rationale should be developed which better suits the needs and desires of an independent school district located coterminous with the boundaries of an Indian reservation.

Indian tribes living on Indian Reservations should have assurance of adequate funding in their budget making and administration of an educational program which is suited to the needs and desires of the Indian people on those Indian Reservations.

Chapter 5

MAJOR FINDINGS OF THE STUDY

The two main sources of federal funding that were surveyed in the study, namely, the Johnson-O'Malley and Impact Aid (PL 874), were presented in table form with information derived from audit reports from two audit firms. The years surveyed were for Fiscal Years 1970 through 1975.

The revenues realized from Johnson-O'Malley and Impact Aid (PL 874) funds were arranged into tabular form which presented information which included Total Revenues and Total Appropriations for Fiscal Years 1970 through 1975.

The main focus of the study was a survey of two main sources of federal funding for the educational program in the school district at Red Lake, consequently, financial data was organized in respective fiscal years to present relationships which would reveal either increases or decreases in corresponding total revenue and total appropriations for each particular fiscal year.

A major finding of the study commencing with Fiscal Year 1970 was that the federal funding sources of revenue, namely, Johnson-O'Malley and Impact Aid (PL 874) consisted of 54.0 per cent of the total revenue for the Red Lake school district. In Fiscal Year 1970 Johnson-O'Malley funds consisted of an amount of $278,965 or 29.4 per cent of the total revenue which was an amount of $947,131. Likewise, Impact Aid (PL 874) funds consisted of an amount of $233,398 or 24.6 per cent of the total revenue in the amount of $947,131.

Thus, percentages of Johnson-O'Malley and Impact Aid (PL 874) contrasted with Total Revenues realized by the Red Lake school district were significantly higher in the early Fiscal Year 1970 compared to later Fiscal Years such as Fiscal Year 1974. Johnson-O'Malley decreased to a low percentage of 14.4 per cent for Fiscal Year 1975.

The high percentage for Johnson-O'Malley funds was Fiscal Year 1971 which was in the amount of 29.8 per cent. During this fiscal year Johnson-O'Malley funds were a significant portion of the Total Revenues derived by the Red Lake school district for the operation of the educational program on the Red Lake Indian Reservation.

The corresponding high percentage for Impact Aid (PL 874) was Fiscal Years 1972 and 1973 with 27.9 designated for both Fiscal Years. During these fiscal years Impact Aid (PL 874) funds were a significant part of the Total Revenues received by the Red Lake school district for the operation of the educational program on the Red Lake Indian Reservation.

The low percentage Fiscal Year for Johnson-O'Malley funds was in 1975 when the amount was 14.4 per cent. This decrease in federal funds within the Johnson-O'Malley source of funds has had grave implications on the educational program of the district. From a high percentage figure of 29.8 per cent for Johnson-O'Malley source of funds in Fiscal Year 1971 the percentage has plummeted to 14.4 per cent in a matter of four fiscal years.

In contrast, the low percentage year for Impact Aid (PL 874) was Fiscal Year 1974 when the amount was 15.8 per cent. In the two preceeding fiscal years, the percentage of Impact Aid (PL 874) source of funds was 27.9 per cent for Fiscal Years 1972 and 1973. Likewise, the sudden decrease in federal funds within the Impact Aid (PL 874) source of funds has had grave implications on the educational program of the district. Fortunately, the percentage increased to 24.5 per cent the following fiscal year after a sudden decrease in the amount of 15.8 per cent in Fiscal Year 1974.

During the six fiscal years included in the study, Johnson-O'Malley funds averaged 22.7 per cent of the total revenues received during Fiscal Years 1970 through 1975. In contrast, Impact Aid (PL 874) funds averaged 23.0 per cent of the total revenue during Fiscal Years 1970 through 1975.

It is interesting to note that Impact Aid (PL 874), though not basically a federal source for operational support for public school assistance, averaged higher than Johnson-O'Malley source of funding which has been known as a permanent source of funding for public school education on or near reservations.

Another major finding of the study was that in comparing Total Appropriations and Total Revenues for the six fiscal years, Fiscal Years 1974 and 1975 are pertinent in the sense that during those years the percentage was over 100 per cent with 112.6 per cent and 114.8 respectively. Prior to Fiscal Years 1974 and 1975, the percentage comparisons were less than 100 per cent with 90.5 per cent for Fiscal Year 1970, 92.3 per cent for Fiscal Year 1971, 74.2 for Fiscal Year 1972, and 87.1 per cent for Fiscal Year 1973.

These major findings reveal that Total Appropriations exceeded Total Revenue for the two latter fiscal years of the study. A significant finding revealed that the lowest percentage comparison was 74.2 per cent during Fiscal Year 1972 when Total Appropriations were $1,065,219 as compared to Total Revenue which totaled $1,436,193. This finding is very significant as it revealed that 25.8 per cent of the Total Revenue received for Fiscal Year 1972 was not expended for any purpose.

Total revenue for Fiscal Year 1970 was slightly under one million dollars and five years later the Total Revenue was approaching the two million dollar figure. Total Revenue rose from $947,131 in Fiscal Year 1970 to $1,829,918 in Fiscal Year 1975. Thus, within a period of six years the Total Revenue for the Red Lake school district almost doubled.

FINDINGS FOR EACH FISCAL YEAR 1970 - 75

In Fiscal Year 1970 Johnson-O'Malley funds totaled $278,965 and Impact Aid (PL 874) funds totaled $233,398 as compared to overall totals of $947,131 for Total Revenue and an overall total of $857,617 for Total Appropriations.

Johnson-O'Malley funds in Fiscal Year 1970 consisted of 29.4 per cent of the Total Revenue as contrasted with Impact Aid (PL 874) funds which consisted of 24.6 per cent. In comparing Total Appropriations with Total Revenue for Fiscal Year 1970 the percentage comparison amounted to 90.5 per cent which indicated that expenditures were significantly less than Total Revenue.

In Fiscal Year 1971 Johnson-O'Malley funds totaled $324,617 and Impact Aid (PL 874) funds totaled $187,932 as compared to overall totals of $1,088,794 for Total Revenue and an overall total of $1,005,564 for Total Appropriations.

Johnson-O'Malley funds in Fiscal Year 1971 consisted of 29.8 per cent of the Total Revenue as contrasted with Impact Aid (PL 874) funds which consisted of 17.2 per cent. In comparing Total Appropriations with Total Revenue For Fiscal Year 1971 the percentage comparison amounted to 92.3 per cent which indicated that expenditures were slightly less than Total Revenue.

In Fiscal Year 1972 Johnson-O'Malley funds totaled $287,415 and Impact Aid (PL 874) funds totaled $402,114 as compared to overall totals of $1,436,193 for Total Revenue and an overall total of $1,065,219 for Total Appropriations.

Johnson-O'Malley funds in Fiscal Year 1972 consisted of 20.0 per cent of the Total Revenue as contrasted with Impact Aid (PL 874) funds which consisted of 27.9 per cent. In comparing Total Appropriations with Total Revenue for Fiscal Year 1972 the percentage comparison amounted to 74.2 per cent which indicated that expenditures were significantly less than Total Revenue.

In Fiscal Year 1973 Johnson-O'Malley funds totaled $416,127 and Impact Aid (PL 874) funds totaled $458,375 as compared to overall totals of $1,637,724 for Total Revenue and an overall total of $1,426,833 for Total Appropriations.

Johnson-O'Malley funds in Fiscal Year 1973 consisted of 25.4 per cent of the Total Revenue as contrasted with Impact Aid (PL 874) funds which consisted of 27.9 per cent. In comparing Total Appropriations with Total Revenue for Fiscal Year 1973 the percentage comparison amounted to 87.1 per cent which indicated that expenditures were significantly less than Total Revenue. It is interesting to note that during this fiscal year the two federal funding sources of which this study is about amounted to 53.3 per cent of the Total Revenue.

In Fiscal Year 1974 Johnson-O'Malley funds totaled $233,136 and Impact Aid (PL874) funds totaled $212,853 as compared to overall totals of $1,342,187 for Total Revenue and an overall total of $1,511,790 for Total Appropriations.

Johnson-O'Malley funds in Fiscal Year 1974 consisted of 17.3 per cent of the Total Revenue as contrasted with Impact Aid (PL 874) funds which consisted of 15.8 per cent. In comparing Total Appropriations with Total Revenue for Fiscal Year 1974 the percentage comparison amounted to 112.6 per cent which indicated that expenditures were significantly higher than Total Revenue.

In Fiscal Year 1975 Johnson-O'Malley funds totaled $264,092 and Impact Aid (PL 874) funds totaled $447,458 as compared to overall totals of $1,829,918 for Total Receipts and an overall total of $2,100,718 for Total Disbursements.

Johnson-O'Malley funds in Fiscal Year 1975 consisted of 14.4 per cent of the Total Receipts as contrasted with Impact Aid (PL 874) funds which consisted of 24.5 per cent. In comparing Total Disbursements with Total Receipts for Fiscal Year 1975 the percentage comparison amounted to 114.8 per cent which indicated that expenditures were significantly higher than Total Receipts.

It is interesting to note that the two last years of the survey were exemplified with higher expenditures compared to revenue or receipts. This was evident during the fiscal years that the source of federal funds were decreasing in percentage in comparison to revenue or receipts.

It is also noteworthy that in Fiscal Year 1975 the terms Total Disbursements and Total Receipts were used instead of Total Appropriations and Total Revenue because of the change in auditing firms from Edward W. Brady, Ltd., Grand Forks, North Dakota, a Certified Public Accountant firm, to the Holcomb, Knutson & Company, Certified Public Accountants, Bemidji, Minnesota.

SUMMARY

Because the federal funds surveyed are urgently needed for the operational support of the educational program on the Red Lake Indian Reservation, data obtained from examination reports of Certified Public Accountant firms for Fiscal Years 1970-75 was arranged in table form to present relationships and implications to the end that the two sources of federal funds were very important to the separate existence of an educational insititution on the reservation.

A major finding that supports the hypothesis that federal funds are urgently needed for the operational support of the educational program on the Red Lake Indian Reservation was that in Fiscal Years 1970 and 1973 the Total Revenue of the Red Lake school district consisted of 54.0 per cent and 53.3 per cent respectively of Johnson-O'Malley funds and Impact Aid (PL 874) funds.

Another major finding was that the percentages of Johnson-O'Malley funds and Impact Aid (PL 874) funds compared with Total Revenues realized by the Red Lake school district were diminishing as revealed with 54.0 per cent in Fiscal Year 1970 to a low of 34.1 per cent in Fiscal Year 1974. However, the percentage figure rose in Fiscal Year 1975 to 38.9 per cent which is yet significantly lower than Fiscal Year 1970 when the percentage was 54.0 per cent.

Another major finding of the study was that Total Appropriations or Total Disbursements exceeded Total Revenue or Total Receipts in the last two fiscal years surveyed. During Fiscal Year 1974 the percentage comparison of Total Appropriations with Total Revenue was 112.6 per cent. In Fiscal Year 1975 the percentage comparison of Total Disbursements with Total Receipts was 114.8 per cent.

The above findings revealed that for the last two fiscal years surveyed the Total Appropriations or Total Disbursements exceeded the Total Revenue or Total Receipts by a significant amount.

In summarizing the major findings of the study, it is evident that the operational support by Johnson-O'Malley funds and Impact Aid (PL 874) funds is urgently needed and that without this support the survival of an educational institution on the reservation would be highly questionable.

It is therefore exceedingly important that the revenue from the two federal sources that were surveyed be maintained and increased so that the Red Lake school district may continue in its task to provide the best possible educational program for all students on the Red Lake Indian Reservation.

Chapter 6

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The Red Lake school district which is located on the Red Lake Indian Reservation is tax exempt thereby it relies heavily on federal sources of revenue and State foundation aids to finance the educational program on the reservation.

SUMMARY

Because of the importance of the two federal sources of revenue to the Red Lake school district, a hypothesis was stated which emphasized the urgent need of two federal sources for operational support of the educational program on the Red Lake Indian Reservation. It further stated that without these funds, the separate existence of an educational institution on the reservation which it serves would be highly questionable.

The study was designed with respect to intensifying and improving federal funding sources of Indian reservation schools with special reference to one independent school district located on the Red Lake Indian Reservation. The two federal sources of revenue involved in the study were the Johnson-O'Malley and Impact Aid (PL 874) sources of revenue.

The two major sources of federal revenue contribute a significant percentage of the total receipts received by the Red Lake school district. The paramount concern of the study was to emphasize how heavily the Red Lake Indian Reservation relies on federal funding, namely, Johnson-O'Malley and Impact Aid (PL 874) funds for much of the operational support for the educational program of the school district.

The statement of the problem pointed to the urgent need for federal funding from the two sources surveyed for the operational support of the school system on the Red Lake Indian Reservation.

Data gathered from the examination reports for six fiscal years were arranged into tables which showed revenues realized from Johnson-O'Malley funds and Impact Aid (PL 874) funds by Independent School District No. 38, Red Lake, Minnesota, in comparison with Total Revenues and Total Appropriations.

Data was also organized so that percentages of Johnson-O'Malley funds and Impact Aid (PL 874) funds could be shown in comparison with Total Revenue realized by the Red Lake school district.

A major finding that highly supported the hypothesis of the study revealed that in Fiscal Years 1970 and 1973 the Total Revenue of the two federal sources surveyed totaled 54.0 per cent and 53.3 per cent respectively. This finding points out that the federal source of funding for the operational support of the educational program within the Red Lake school district is a very significant part of the overall school system.

Another major finding revealed that the percentages of Johnson-O'Malley funds and Impact Aid (PL 874) funds compared with Total Revenue or Total Receipts were diminishing from 54.0 per cent in Fiscal Year 1970 to a low figure of 34.1 per cent in Fiscal Year 1974.

Another major finding showed that Total Appropriations were less than the Total Revenue in the first four fiscal years of 1970 through 1973 while for the last two fiscal years of 1974 and 1975 the Total Appropriations exceeded the Total Revenue by 12.6 per cent and 14.8 per cent respectively. A significant finding pointed out that in Fiscal Year 1972 the Total Appropriations were 74.2 per cent of the Total Revenue indicating that 25.8 per cent of the Total Revenue were not expended.

V

CONCLUSIONS

One of the major findings of the study point out the relationship of the two federal funding sources in regard to the Total Revenue or Total Receipts of the Red Lake school district. The findings show the urgent necessity of the two sources of federal funds, namely, Johnson-O'Malley funds and Impact Aid (PL 874) funds to the Red Lake school district.

From the findings it is shown that in two of the years surveyed, Fiscal Year 1970 and Fiscal Year 1973, the percentage of the Total Revenue from the two federal sources was over 50 per cent. From this finding it can be concluded that a significant part of the overall budget for the school district educational program heavily relies upon the two sources of revenue, namely, Johnson-O'Malley funds and Impact Aid (PL 874) funds.

Another major finding that was shown in the survey was that percentages of Johnson-O'Malley funds and Impact Aid (PL 874) funds compared to Total Revenue or Total Receipts were diminishing from 54.0 per cent to a low percentage of 34.1 per cent. From this finding it can be concluded that the large decrease in percentage of sources of federal funds present a difficult problem and servere implications in the administration of a smooth and efficient educational program on the Red Lake Indian Reservation.

The proposition that without the revenue that the Red Lake school district receives from these two sources, the separate existence of an educational institution on the reservation which it serves would be nil, is clearly validated by the analysis of the significant part of the Total Revenue and Total Receipts that the Red Lake school district receives from these two sources, namely, Johnson-O'Malley funds and Impact Aid (PL 874) funds.

The Johnson-O'Malley funds and Impact Aid (PL 874) funds were diminishing percentage wise in the comparison of the two sources of funds with Total Revenue and Total Receipts during the span of six fiscal years, namely, Fiscal Year 1970 through Fiscal Year 1975. The implications of this decline in percentage of the two sources of revenue will have a profound effect on the financing of the educational program of the Red Lake school district.

Because of the federal relationship that the Red Lake Indian Reservation has had with the Bureau of Indian Affairs, Department of the Interior, concerning the educational services for the Red Lake Band of Chippewa Indians, it is exceedingly important that an adequate amount of funds be provided by the Bureau of Indian Affairs and other agencies for the continued maintenance and improvement of the educational program for the youth and students on the Red Lake Indian Reservation.

Besides the importance of the two sources of federal funding that the study was about, a finding was revealed that out of the six fiscal years surveyed, the first four fiscal years indicated that the Total Appropriations were less than the Total Revenue. The final two fiscal years showed that the Total Appropriations or Total Disbursements exceeded the Total Revenue or Total Receipts by a significant amount. This finding has critical implications in the sense that it is related to deficit budgeting and spending in especially the fiscal years that the two sources of federal funds were diminishing percentage wise compared to the prior four fiscal years, namely, Fiscal Year 1970 through Fiscal Year 1973 when the two federal sources in total reached 54.0 per cent of the Total Revenue.

The diminishing percentages of Johnson-O'Malley funds and Impact Aid (PL 874) funds compared to Total Revenues and Total Receipts can logically be interpreted as a serious financial need for adequate and predictable funding from these two federal sources for the maintenance and operation of a school district that serves 835 Indian students on the Red Lake Indian Reservation.

The amount of Johnson-O'Malley funds received varied greatly, more so than Impact Aid (PL 874) funds. This may be attributed to the change in criteria used in the allocation of Johnson-O'Malley funds that occurred beginning in 1974 through the amending of the Code of Federal Regulations and again with the passage of the Indian Self Determination and Indian Education Assistance Act which mandated the promugation of the rules and regulations to implement the Act.

It can be assumed that because of the Johnson-O'Malley regulation amendments, initiated in 1974 and which dealt with the change in distribution formula, the distribution of funds were allocated to the detriment of some school districts and also to the benifit of other school districts.

With the great variance in Johnson-O'Malley grants among States, it is very improtant that school districts such as Red Lake with 835 Indian students be recognized as a priority school for firmly established criteria for the allocation of Johnson-O'Malley funds. To do less would be the failure of the Bureau of Indian Affairs, Department of the Interior, to assure adequate educational opportunities for all Indian children of one-fourth or more degree of Indian blood within the continental United States and Alaska.

RECOMMENDATIONS

Based on the data and findings of this study, it is recommended:

That the Bureau of Indian Affairs continue to contract with the Tribal Council of the Red Lake Band of Chippewa Indians to administer the Johnson-O'Malley funds for the benifit of the Red Lake school district.

That the definition of an Indian as defined in the Code of Federal Regulations that went into effect September 20, 1974, be retained.

That the Bureau of Indian Affairs continue providing Johnson-O'Malley funds for basic support for the Red Lake school district based on the criteria that the school district is on a closed reservation and that it enrolls 835 Indian students.

That both the Bureau of Indian Affairs, Department of the Interior, and Office of Education, Department of Health, Education, and Welfare support increased funds for Impact Aid (PL 874) and for the Indian Self Determination and Indian Education Assistance Act (PL 93-638) for basic support and as a source of construction funds.

That the Bureau of Indian Affairs increase the amount of Johnson-O'Malley funds allocated to the Red Lake school district and contracted with the Tribal Council of the Red Lake Band of Chippewa Indians.

That the Bureau of Indian Affairs in consultation with tribal government officials adopt a federal finance system that is sensitive and responsive to basic economic conditions so that a fair and equitable federal finance system may be designed to take into account the unique characteristics and financial needs of the Red Lake school district.

That the Johnson-O'Malley funds and Impact Aid (PL 874) funds should be made predictable; the level of funding the Red Lake school district's budgeting process.

Bureau of Indian Affairs and Office of Education staff members as well as Congressional members should become knowledgable and have a continuing interest in finance systems that support the educational programs on the Red Lake Indian Reservation. Time must be taken to consult with elected Indian officials.

PREPARED BY BYRON L. GRAVES
Red Lake, Minnesota

SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590 Telephone 267-4797

July 12, 1977

United States Senate
Select Committee on Indian Affairs
Washington, D. C.

Attn: Mr. Tony Strong

Dear Mr. Strong:

In reply to our telephone coversation, please find enclosed supporting documentation to those allegations stated in Rachel Whitish's, Chairwoman, Shoalwater Bay Indian Tribe, testimony of June 21, 1977.

We regret the delay in getting this to you; however, we wanted to ensure each "case" was complete.

Another concern of the Shoalwater Bay Indian Tribe, is the one-quarter degree blood quantum required by education programs under P.L.93-638. Many of our Tribal Members are deprived of education because of the Department of Interior's assumption that they know best who is "Indian" and who is not.

We thank you for your concern for the Indians of this great country.

Warm regards,

Tom Wilcox

Tom Wilcox
Planner/Manager

TW:llt

Shoalwater Bay Indian Tribe
Tokeland, Washington 98590

details on
mail to 0SOB

TESTIMONY
UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C.

WITNESS: Rachel Whitish, Chairwoman, Shoalwater Bay Indian Tribe

The Shoalwater Bay Indian Tribe is located on 334.75 acres, plus tidelands, in Pacific County, Washington, and has a membership of eighty-four (84).

As a small tribe, we see a definite need to correct some very real problems in the implementation of P.L.93-638. If these problems are not corrected - it could bring about the destruction of my tribe as well as other small tribes in this country.

In theory, P.L.93-638 and the contracting process is simple and direct. In reality it is a nightmare of Bureau ineptness, tribal misunderstanding and mountainous paperwork.

My Tribe is one of twenty-three (23) tribes in the Western Washington Agency, Portland Area. In attempting to contract Bureau of Indian Affairs Programs, we find that the biggest hurdle is lack of sufficient funds. To compound this problem our Tribe is required to seek information about funding from the Agency Office with which we are contracting. The Bureau on the other hand is protecting staff and administrative funding by subtracting this cost from funds allotted to programs. To decrease the Bureau cost and hence the level of Bureau services we are required to get a Resolution from each of the other twenty-two (22) tribes before funds can be committed to our contract proposal. The Bureau at its discretion uses this rule to block many attempts at contracting with some tribes, but will waive the requirements when seeking to pacify another. This procedure is used when tribes have no definite source of funds within the program and are seeking discretionary or other pools of funds to contract for services.

Budget information on funding levels is relatively nil. We are required to seek the information from the program we wish to contract. The program officer in wishing to keep his position and staff levels constand, discloses only those funds that may be in excess. In looking at those small amounts of excess funds available and realizing that it is to be divided among twenty-three (23) tribes, it makes one wonder if P.L.93-638 and its proclamations of Self-Determination is a farce.

The Band Analysis reflects the same thinking. There is very little room for program expansion and no room for the twenty-three (23) tribes of Western Washington in consolidating programs. Therefore, funding levels in preferred programs will not raise to the point where those programs can be funded by contracting.

The budget process should have the input of the tribes and realistically reflect the needs of the Tribal Governments first, the Bureau second. There should also be some reflection of programs or portions of programs which meet the needs of Trust responsibility as required by statute.

It is frustrating to my Tribe and myself to have to continually fight for every small grant or contract, while larger tribes with more political clout within the Bureau need only ask.

We feel it is an injustice to Indian Self-Determination that the smaller Indian Tribes of this country have to consistently justify their existence.

RACHEL WHITISH
CHAIRWOMAN

The Shoalwater Bay Indian Tribe applied for three (3) Training & Technical Assistance Contract in late 1976 and early 1977. (See attached).

In February, 1977, Don Smouse, Reservation Programs Officer, Western Washington Agency requested that the Tribe list these proposals by priority. Business Manager, Tom Wilcox replied with the following rating: #1 - Redesigning of Fiscal Management System; #2 - Economic & Marketing Feasibility Study; #3 - Conference of Tribal Governments.

Only one (1) contract was awarded completely and this was for the Conference of Tribal Governments (Priority #3). The Redesigning of Fiscal Management System (Priority #1) was "cancelled" for lack of funds and the Economic & Marketing Feasibility Study (Priority #2) was partially approved and partially ignored.

It should be noted that in addition to cancelling an extremely vital contract proposal by our Tribe on April 4, 1977 for lack of funds, that the Portland Area Office on April 8, 1977, committed $10,000 in Training & Technical Assistance funds to the Quinault Indian Nation for a second Conference of Tribal Governments which was held in April, 1977.

May 26, 1977: Shoalwater Bay Tribal Council's Contract Proposal's for P.L.93-638 funding for a Natural Resources Development Technician and a Program Planning & Coordinator.

June 9, 1977: Letter from Assistant Superintendent, Western Washington Agency, Hoquiam Field Station, reporting that "there are no funds tentatively allocated for contracts in FY-78" and requesting a meeting about both contract proposals.

June 21, 1977: Discussion with O'Dean Williamson, Assistant Superintendent, B.I.A., Western Washington Agency, Hoquiam Field Station, about contract proposals. The Tribe was informed that in order to contract for Bureau services as stated in the original contract proposals it would be necessary for the Tribe to obtain assenting resolutions from all other tribes in the Western Washington Agency.

June 26, 1977: As an alternative the Shoalwater Bay Tribal Council submitted contract proposal "Program Study & Redesign."

July 5, 1977: The Tribe was informed by the Western Washington Agency that "Program Study & Redesign" should be resubmitted in grant form. Also that any funding for this program would "have to come from sources other than the Western Washington Agency".

ECONOMIC & MARKETING FEASIBILITY STUDY

October 19, 1976: Shoalwater Bay Tribal Council's request (Resolution #10-19-76-59) for services through P.L. 93-638 Training & Technical Assistance funding for the following:

1. Approval of Land Consolidation
2. Economic & Marketing Feasibility Studies
3. Communication System & Services
4. Tribal Operations Officer Trainee
5. Reservation Program Development Officer Trainee

November 10, 1976: Contract Proposal forwarded from Hoquiam Field Station, Bureua of Indian Affairs, to Western Washington Agency, Bureau of Indian Affairs.

January 13, 1977: Western Washington Agency forward Contract Proposal to Area Director, Portland Area Office recommending approval on items #1 and #2.

February 10, 1977: Portland Area Director approved item #1 of Contract Proposal.

Item #2 was turned down for lack of funds. The Bureau; however, suggested that the Tribe contact the B.I.A. Planning Support Group, Billings, Mt., to complete the Economic & Marketing Feasibility Study. This arrangement was satisfactory to the Tribe and the Study is now being done.

(NOTE: The delay in forwarding this proposal from the Western Washington Agency to the Portland Area Office was due to it being misplaced at the Agency level. On December 17, 1976, Business Manager Tom Wilcox went to the Agency Office and could not locate any record of it being received by them. Mr. Don Smouse , Reservations Program Office, Western Washington Agency, had a personal copy in his files and this was hand carried by the Business Manager, Tribal Chairwoman and S.T.O.W.W. Legal Counsel to the Portland Area Office.)

Items #3,#4,#5, were never commented on by either the Western Washington Agency or the Portland Area Office.

SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590 Telephone 267-4797

Resolution No. 10-19-76-59
Shoalwater Bay Tribal Council

WHEREAS, it is the purpose of P.L. 93-638, the Indian Self Determination and Education Act, to enhance and strengthen Tribal Governments to the extent that they may be Self-governing, and

WHEREAS, it is the purpose of this proposal to request that the Bureau of Indian Affairs to provide under the guilelines of P.L. 93-638 required services for FY-77 to insure that the Shoalwater Bay Indian Tribe can be Self-governing, and

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe, and

WHEREAS, the Shoalwater Bay Tribal Council requests to contract certain services under the guilelines of P.L. 93-638, now

THEREFORE BE IT RESOLVED, that the Bureau of Indian Affairs contract with the Shoalwater Bay Tribal Council for the following services:

1) Approval of Land Consoladation Plan (see attachment one-1-)
2) Economic and Marketing Feasibility Studies (see attachment two-2-)
3) Communication System and Services
   Goal: To improve and maintain communications on all levels of of Tribal Administration at both a time and cost saving benefit to Tribal Administration.
*4) Tribal Operations Officer Trainee
   Goal: To improve and maintain at the tribal level an effective Tribal Operations person and/or position who will facilitate and document Tribal Records of Enrollment; Contracts; and Resolutions to various Governmental Agencies and Tribal Administrators.
-*5) Reservation Program Development Officer Trainee
   Goal: To improve and maintain at the Tribal level an effective program of Reservation Development and Administrative

Planning controls in the areas of Community and Economic Development.

* These last two positions will be key administrative staff positions under the Planner/Manager.

AND BE IT FUTHER RESOLVED, that the Shoalwater Bay Tribal Council Chairperson and the Tribal Planner/Manager (Rachel Whitish and Tom Wilcox) can negotiate for this contract and services renderd. Also, that a contact person within the Bureau of Indian Affairs at the agency and area office level be assigned to this proposal who will facilitate and expedite any agreements between the Tribe and the Bureau of Indian Affairs.

CERTIFICATION

The above resolution was passed at a special meeting by the Shoalwater Bay Tribal Council on the date of October 19, 1976 at which a quorum was present. The meeting was held on the Shoalwater Bay Indian Reservation at the Tribal Office. The vote was __For and __Against.

Attest:

Rachel Whitish, Chairperson

Bruce Davis

Bruce Davis, Vice-chairperson

Attachment (1)

Proposal for Land Consolidation Plan
Shoalwater Bay Indian Reservation

In an analysis of planning activities on the Shoalwater Bay Indian Reservation concerning the development of tribal resources to provide an economic and community development base by which the Shoalwater Bay Indian Tribe can at some future date realise the full intent of P.L. 93-638. It was found that the land base will be too small to accommodate future program activities.

We propose to form a land consolidation area adjacent on all sides to the reservation so that the tribe may be able to purchase the fee simple title to the enclosed lands and transfer the fee title to trust status.

This activity will enable the Tribe to acquire needed land for expansion purposes as the economic activity and population of resident members increase.

The land in question will be studied as per Attachment (2) and (2A) of this proposal. Attachment (2) concerns itself with the make-up of the economic feasibility. Attachment (2A) is the proposal for a Community Development Plan on foing at the present time under Grant Agreement #P10G14206004.

The following is the Legal Discription of Shoalwater Bay Indian Tribe Consolidation Area for Land Acquistion.
The following is a metes and bounds discription of said area;
Commencing at a point, that point being the N.W. corner of Sec. 31 T.15.N. R.10. W. W.M. thence south along said Sec. 31 boundry line to a point, that point being the N.E. corner of the South ½ of S.W.¼, Sec. 36, T.15N. R.11W. W.M. thence West to the N.W. corner of S½ S.W.¼ Sec. 36 T.15.N. R.11W. W.M.; thence South to the S.W. corner of S½ S.W.¼ Sec.36 T.15N. R.11W. W.M.; thence West along the Northern boundry line of T.14N. R.11W. to apoint, that point being the N.W. corner of the N.E.¼, Sec.4 T.14N. R.11W.; thence South along the West boundry of N.E.¼ to a point, that point being the N.E. corner of the South ½,N.E.¼, S.W.¼ Sec. 4 T.14N., R.11W. W.M., thence West to the N.W. corner of the South ½, N.E.¼ S.W.¼ Sec.4 T.14N. R.11W. W.M.; thence South to a point in Willapa Bay being the S.W. corner of the S.E.¼, S.W.¼, Sec.9 T.14N. R.11W. W.M.; thence East to the S.E. corner Sec.11, T.14N. R.11W. W.M.; thence South to the S.W. corner of the N.W.¼ Sec. 13 T.14N. R.11W. W.M.; thence East to a point in Willapa Bay, that point being the S.E. corner of the N.E.¼ Sec. 18

T.14N. R.10W. W.M.; thence North along the East boundries line Sec. 18, 7,& 6 T.14N. R.10W. W.M. and East boundry line of Sec.31 T.15N. R.10W. W.M. to a point, that point being the N.E. corner of Sec. 31 T.15N. R.10W. W.M.; thence West to the N.W. corner of said Sec.31, said corner being the true point of beginning.

The area will include the following:

In Section 4, T. 14N., R. 11 W. W.M., Wash.:
The N.E.¼; the S.E.¼; the S.E.¼S.W.¼; and the S.½N.E.¼S.W.¼

In Section 9, T.14N., R.11W., W.M.,Wash.:
The E.½ of Sec. 9; the E½ N.W.¼; and the E.½ S.W.¼

In Section 3, T.14N., R.11W., W.M. Wash.:
The N.½N.E.¼; the N.½N.W.¼; the S.W.¼N.W.¼; and the W.½S.W.¼

In Section 2, T.14N., R.11W., W.M. Wash:
The E.½ of Section 2; the E.½N.W.¼; the N.W.¼N.W.¼; and the E.½S.W.¼

All of Sections 1, 10, 11, & 12 and the N.½ of Section 13 all in T.14N., R.11W., W.M., Wash.

All of Sections 6 and 7 and the N.½ of Section 18, all in T.14N., R.10W., W.M., Wash.

The S.½S.E.¼ of Section 36 in T.15N., R.11W., W.M., Wash.

AND

All of Section 31, T. 15N., R.10W., W.M., Wash.

SHOALWATER BAY INDIAN TRIBE
Tokeland, Washington 98590 Telephone 267-4797

Economic and Marketing
Feasibility Study
Proposed Organization of Work

The land held by the Shoalwater Bay Tribe comprises underdeveloped timber land, open areas, and shoreline/tidelands in Willapa Bay. The Tribe is undertaking a comprehensive development effort and has presently secured participation by BIA, HUD (701 program), ONAP, and DHEW. Economic development is being sought as a key factor to support this growth effort. Economic activities can provide direct benefits to Tribal Members; they can provide matching funds needed for further efforts and can sustain activities not eligible for grant funds.

Proposals have been made, both to acquire existing enterprises and to establish new ventures. (Development of Tribal policies is also a need.) Economic analysis is required before the Tribe can porceed. An over-all strategy of development is needed, one which will consider resource factors, local and national markets, risk factors, and time needed to develop profitability.

Framework of Analysis

Feasibility is judged on potential profit versus risks and time needed to develop profit flows. Study must consider market factors, cost factors, pay-back period, risk variables, and management:

Market Factors

consumption trends for the product (price and quantity)
factors felt by market analysts to be the determinants of these trends
income effects on consumption, if known
substitutable commodities which impact on the demand
location of purchasers
seasonality of demand
potential, if any, for foreign export

Study will compile records of contracts with marketing associations, and potential buyers, so that these contacts are available when (if) the business is initiated

Cost factors

resources required
labor costs (by skills area needed)
transportation
processing (if required before sale)
capital needs (for various scales of entry and expansion)
operating costs--depreciation and maintenance, power
taxes (as applicable)
marketing expenses

Pay-back period

time to obtain capital
training, if needed
production levels that can be achieved at a give time after entry
complementarities between enterprises

Risk factors

identify and list
compare their impact on similar enterprises
consider extent of possible losses and methods to reduce risk

Management

resources for technical assistance and training
structure to be preferred, if enterprise lends itself to a particular mode of organization

Scope of Work

It is the intent of the feasibility studies to thoroughly explore the economic, technical and environmental feasibilities of developing through expansion of the tribal boundries, a firm economic base for the tribe.

Scope of Work continued-

The study area is defined generally as the Nelson Ranch encompassing about 1,100 acres and immediately adjoining the Shoalwater Reservation and, as it is inter-related, the existing reservation lands. Each element would be described and fully detailed in the Plan of Study. Because of its importance, the Natural Resource Inventory has been outlined in a following section.

Natural Resource Inventory

Since the natural resources of the study area are relatively undeveloped, a real opportunity is offered for truly comprehensively planned resources, namely land, estuarine, water, timber, and fisheries. A serious planning problem including feasibility analysis, for the area will be lack of data. The potential for management of such resources by the Shoalwater Bay Tribe, however, underscores the study of numerous considerations for develment.

Describe and document the boundries, title, easements, water rights, and other rights or limits pertaining to the purchase and use of the proposed lands.

Identify the existing and potential uses of the study area land, tideland, and water areas.

Describe and document the total water resources within and immediately adjoining the study area, relying primarily on existing information with a program to be identified for additional data collection.

Determine the hydrographic and other characteristics of estuary water resources within the limits of the study area by collecting, compiling, and evaluating available information on aquatic ecosystems, water quality data and wildlife habitat.

Define and evaluate preliminary aspects of the freshwater resources of the study area, both surface and sub-surface and identify potential uses and limits of such uses.

Natural Resource Inventory continued-

Determine the existing timber resources of the study area, including extent of harvestable timeber stand, present management practices and identify future potential in conjunction with land use alternatives.

Define and evaluate existing and potential tideflat fishery including commercial development for oysters, clams, and crabs.

This work is proposed in two stages:
Background research to accumulate a general information base.
Detailed study of cast factors, revenue potentials, risk variables, and management considerations for those ventures deemed suitable (this is to be decided by the Tribe).

During the course of this research, periodic reporting to the Tribal Council will convey information; also, these sessions will attempt to build a total understanding of economic development, business processes, and Tribal rights. The framework of analysis will be that of a competitive corporation whose activities are economically feasible if (anticipated) returns are in excess of (anticipated) costs. The function of the study team will be to prepare issues for Tribal decision, with information and policy analysis.

I First Research Phase (6 weeks to 2 months)

Applies to:

General economic environment of the Tribe

Present status:

Tribe has identified a list of potential new ventures and acquisitions (since 1971?)
Policy of Individual vs Tribal operation not yet set out.
Land base not optimal.
General factors that will determine feasibility of businesses at this location are not well understood.

Goal:

To develop an overview of the economic environment.
To prepare (from this overview) the knowledge base needed for thorough understanding of key decision variables.

Resources:

Academic and governmental research personnel to assess biological factors

Business libraries

Business organizations

Governmental planning

Man-days (preliminary)!

10 days research @ 80	800
3 days prepare presentation for Tribal Council @ 80	240
6 days technical consultants @ 125	750
	1,790
Travel - 4 round-trips Seattle-Shoalwater Bay @ 15 (gas cost)	60
CIP administration (including graphics)	600
	2,450

II Second Research Phase (6 months)

Applies to:

Selected business areas

Begins:

By Tribal decision-making based on previous research

Resources:

More intensive use of specialized personnel research guidance by Tribal Committees, with steady information transfer both to these and directly to Tribal Council.

Goal:

To complete knowledge base for entry into selected business opportunities.

Cost elements:

Funding (capital acquisition) research 30 days @ 100	3,000
Economic analysis (refinement) 45 days @ 100	4,500
Management structure research 30 days @ 100	3,000
	10,500

II Second Research Phase continued-

Travel - round trips Seattle - Shoalwater Bay		
(one per week) 26 @ 15		390
Per-diem (for Tribal consultants)		
20 days @ 25		500
		11,390
Administrative Support		
(includes WATS line)		4,500
		15,890
	2,450	
		18,340

III Third Research Phase (6 weeks)

Applies to:

Report on suggested development strategy

Present status:

Enterprises have been suggested and promoted independently of any multi-year growth plan (for example, acquaculture if recommended because of the tidelands resources. without regard to its pay-back period)

Man days:

Draft		
10 days @ 100		1,000
Review		
10 days @ 100 plus		
15 days of business community @ 100		2,500
Final report for Tribal Council		
8 days @ 100		800
		4,300
Travel (see above)		
6 trips @ 15		90
Printing and graphics		1,500
Administrative		2,500
		8,390
	18,340	
		26,730

Acting Superintendent, WWA

November 10, 1976

Assistant Superintendent, WWA

P.L. 93-638 Contract Proposal, Shoalwater Bay Indian Tribe
Resolution #10-19-76-59.

You will find enclosed a proposal submitted by the Shoalwater Bay Indian Tribe pursuant to Public Law 93-638 for contracting a Communications System, Tribal Operations trainee and a Reservation Programs Officer trainee. The Resolution also requests approval of a Land Consolidation Plan.

Please consider this as my request that the contract proposal be reviewed by Tribal Operations and Reservation Programs for recommendations to you as per your requirements under 25 CFR 271.22 (b). Also consider this as my recommendation that the Branch of Credit and Real Property Management review the Consolidation Plan and prepare the recommendation for its approval.

I will inform the Tribe of the receipt of their contract proposal and Land Consolidation Plan by a copy of this memorandum. Please log this date as our compliance under 25 CFR 271.22 (a).

Assistant Superintendent

Enclosures

cc: Chairperson, Shoalwater Bay Indian Tribe

Subj
Chrono
Green Chrono
Reading Copies: Port Angeles, Hoquiam

O'DLWilliamson:bmm 11/10/76

Laura
Tom
Credit

Western Washington Agency
3006 Colby Avenue - Federal Building
Everett, WA 98201

January 13, 1977

Memorandum

To: Area Director, Portland Area

From: Superintendent, Western Washington Agency

Subject: P. L. 93-638 Contract Proposal for Shoalwater Bay Tribal Council

We are enclosing the Shoalwater Bay Tribe's resolution and supporting data concerning their request for a Tribal Land Consolidation Area as well as a Technical Assistance Contract to cover an Economic and Marketing Feasibility Study. This memorandum covers the items listed as 1 and 2 in the Shoalwater Bay Tribe's Resolution No. 10-19-76-39. This package will need to be reviewed by the Area Office branches of Business & Credit and Real Property Management.

The Shoalwater Bay Tribe is requesting approval of a Tribal Land Consolidation Area surrounding their existing reservation in order to be able to acquire certain tracts of land within that area in trust status utilizing the authority for taking trust title that is provided by the Indian Financing Act of 1974. The area they propose is outlined on the map included with the package and is described in their proposed Land Consolidation Plan. The tribe has the opportunity to acquire lands within the proposed consolidation area that are currently being offered for sale. The purchase of the lands would greatly enhance the Tribe's ability to pursue economic advancement through establishment of economic enterprises. The Tribe will be studying the various types of enterprises to determine feasibility and viability before making final decisions on specific ventures.

Item 2 listed in the Tribe's resolution requests a Technical Assistance Contract to conduct Economic and Marketing Feasibility studies. The package contains the Proposed Organization of Work and the proposed budget for the contract in the total amount of $26,730.00. The Shoalwater Bay Tribe is requesting a feasibility study contract to be funded from Industrial Development funds which are administered by the PAO Branch of Business & Credit. The contract proposal is quite thorough and stipulates the tribe's objectives. The feasibility study will relate directly to the request for the consolidation area since the projects to be studied lie within the consolidation area boundaries. Both parts of the proposal presented by the tribe are important to achieve the goals they have established.

We feel the Shoalwater Bay Tribe has done an excellent job in preparing their proposal and know that they have given this project serious consideration before finalizing their request. We strongly recommend approval of the Consolidation Area and the Technical Assistance Contract.

(Sgd.) Jens A. Anderson, Jr.

ACTING Superintendent

Enclosures

cc: /Shoalwater Bay Tribal Council
Attn: Tom Wilcox

IN REPLY REFER TO:
Real Property
Management

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

FEB 10 1977

Through: Superintendent, Western Washington Agency

Ms. Rachel Whitish, Chairperson
Shoalwater Bay Tribal Council
Tokeland, Washington 98590

Dear Ms. Whitish:

Whereas Title I, Section 106, and Title II, Section 215, of the Indian Financing Act of April 12, 1974 (88 Stat. 77-33), allows land to be purchased within the boundaries of an established Indian Reservation or approved tribal consolidation area, and have title accepted by the United States in trust for a Tribe or individual Indian, and the Shoalwater Bay Indian Tribe, by Tribal Resolution No. 10-19-76-59, passed on October 19, 1976, by the tribal council, has requested the Secretary of the Interior or his authorized representative to declare the following described lands as a Tribal Consolidation Area. and accept title to lands within said area in trust for the Shoalwater Bay Indian Tribe and its members.

Commencing at a point, that point being the N.W. corner of Sec. 31. T. 15N., R. 10 W., W.M. thence south along the West line of Sec. 31 to a point, that point being the N.E. corner of the S½SE¼ Sec. 36. T. 15N R.11W. W.M., thence West to the N.W. corner of S½SE¼ Sec. 36 T.15 N. R.11W. W.M.; thence South to the S.W. corner of S½SE¼ Sec. 36 T.15N. R.11W. W.M.; thence West along the Northern boundary line of T.14N. R.11W. to a point, that point being the N.W. corner of the NE¼. Sec. 4. T.14N, R.11W.: thence South along the West boundary of NE¼ to a point. that point being the N.E. corner of S½N½NE¼SW¼ Sec. 4 T. 14N.. R.11W. W.M., thence West to the N.W. corner of the S½N½NE¼SW¼ Sec. 4 T. 14N. R.11W. W.M.; thence South to a point in Willapa Bay being the S.W. corner of the SE¼SW¼ Sec. 9 T. 14N. R.11W. W.M.; thence East to the S.E. corner Sec. 11. T.14N. R.11W. W.M.. thence South to the S.W. corner of the NW¼ Sec. 13, T. 14N., R.11W., W.M.; thence East to a point in Willapa Bay, that point being the S.E. corner of the NE¼ Sec. 18, T.14N., R.10W., W.M.; thence North along the East boundary lines of Sec. 18, 7 and 6 of T.14N. R.10W., W.M. and East boundary line of Sec. 31 T.15N. R.10W., W.M. to a point, that point being the N.E. corner of Sec. 31, T.15N, R.10W, W.M.: thence West to the N.W. corner of said Sec. 31, said corner being the true point of beginning.

A Consolidation Area is considered necessary in order to promote fisheries development, forestry development, tourism, farming and ranching and other economic pursuits.

Therefore, pursuant to authority delegated to the Area Director by the Commissioner of Indian Affairs in 10 BIAM 3, January 20, 1975, he above described lands are hereby declared an approved Consolidation Area for the Shoalwater Bay Indian Tribe and the members thereof.

Sincerely yours,

Acting Area Director

NOTED AND FORWARDED

John W. Bu[illegible]

SUPERINTENDENT

WESTERN WASHINGTON INDIAN AGENCY

REDESIGNING FISCAL MANAGEMENT SYSTEM

December 7, 1976: Shoalwater Bay Tribal Council's Training & Technical Assistance Contract Application No. P10G14207007 for funds to Redesign the Fiscal Management System. Objective: Redesign was needed in order to meet P.L.93-638 regulations, Appendix B of Part 276.

December 17, 1976: Forwarded with recommended approval from the Bureau of Indian Affairs, Western Washington Agency.

March 22, 1977: Meeting between Roy Sampsel, Program Planning, Portland Area Office and Tom Wilcox, Business Manager, Shoalwater Bay Indian Tribe. Mr. Sampsel suggested the use of the B.I.A. Planning Support Group, Billings, MT., to redesign the system. (NOTE: The Billings Planning Support Group informed the Tribe on April 26, 1977, that they are not now nor have they ever been equiped to do this type of work.)

April 4, 1977: Contract Proposal returned to Tribe from the Portland Area Office. "Cancelled" for lack of funding.

(NOTE: Because of the Tribe's inability to secure funds for the redesigning of the Fiscal Management System, we have failed to meet P.L.93-638 regulations. Contracts which have been awarded will not advance funds until the system is up to standards. Although the B.I.A. has promised funding to do this (June, 1977) as yet the Tribe has not received services or funding and is having difficulty running programs without funds.)

REC'D APR 6 - 1977

Reservation Programs

Western Washington Agency
3006 Colby Avenue, Federal Building
Everett, Washington 98201

April 4, 1977

Ms. Rachel Whitish, Chairperson
Shoalwater Bay Tribal Council
Tokeland, WA 98590

Dear Ms. Whitish:

The recent letter, dated March 18, 1977, to you from the Portland Area Director advises no funds are currently available to cover your Technical Assistance Grant Application No. P10G14207007, "Re "Redesigning Fiscal Management Reporting System". Other ways to address this Tribal need are being explored. This serves, accordingly, to notify that your Technical Assistance Grant Application No. P10G14207007 is hereby cancelled.

Sincerely yours,
"SGD" NELSEN M. WITT

Superintendent

cc:
Tom Wilson, Business Manager, Shoalwater Bay Tribal Council
Program Planning & Coordination, PAO
Assistant Superintendent, Hoquiam
Administrative Manager, WWA
Chrony
File
Mailroom
DSmouse/mb/4/4/77

Reservation Programs

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Western Washington Agency
3006 Colby Avenue, Federal Building
Everett, WA 98201

December 17, 1976

Memorandum

To: Area Director, Portland Area
Attention: Program Planning and Coordination

From: Superintendent, Western Washington Agency

Subject: Request for Technical Assistance, Shoalwater Bay Indian Tribe

The Shoalwater Bay Indian Tribe, in a special Council session held December 7, 1976, has requested Technical Assistance to redesign the Tribal Financial Management System. The Tribe had previously requested this assistance under the auspices' of the P.L. 93-638 Self-Determination Grant Program.

The Tribe subsequently contacted the Portland Area Office of Program Planning and Coordination about possible additions to their grant to cover training for Reservation Program Development and Tribal Operations. They were advised to seek Technical Assistance for financial management and to amend their Grant Application to cover their training needs to strengthen tribal government. This advice has been followed.

We are consequently changing the Grant Application Number P10G14207007 to Technical Assistance Application Number P20G14207007.

We recommend approval of this request for Technical Assistance. We further recommend that Mr. O'Dean Williamson, Assistant Superintendent, be assigned as GOR.

The Tribe's new Grant Application will be submitted, with our recommendations within the next few days.

Superintendent

P.L. 93-638 GRANT APPLICATION

APPLICATION FOR P.L. 93-638
GRANT ASSISTANCE—Part I

1. (BUREAU USE ONLY)
Application Grant No. P1061 207007

Department of the Interior
Bureau of Indian Affairs

2. Western Washington Agency
Agency Office
3006 Colby Avenue, Federal Building
Street Address - P.O. Box
Everett WA 98201
City State Zip Code

3. Shoalwater Bay Indian Tribe
Tribe

Street Address - P.O. Box
Tokeland Pacific
City County
Washington 98590
State Zip Code
(See instructions if two or more tribes are applying)

4. Descriptive Name of Project
Redesigning Fiscal Management Reporting System

5. Funding Requested
$11,300.00

6. Population directly benefiting from the project. 96

7. Date Application Submitted to BIA
November 5, 1976

8. Beginning Date of Project 11/1/76

9. Length of Project 12 months

10. Type of Application or Request. a. Initial Planning Grant ___
b. New Grant X c. Continuation ___ d. Other (Specify) ___

11. Congressional District/s
Third

12. (For Construction Projects Only)
Will the assistance requested have an impact or effect on the environment?
Yes ___ No X
(If yes, provide assessment report under Part II of the application)

13. If a portion of these grant funds is to be used as matching shares for another Federal or non-Federal grant program, does that program meet the purposes as described in 25 CFR 272.12? Yes ___ N.A. X
If yes, describe in detail under Part II of this application.

14. Written tribal request attached. Yes X No ___

15. The Tribe certifies that to the best of its knowledge and belief the data in Part I, II, III, and IV of this application are true and correct.

Rachel Whitish
Name of authorized official
(Please print or type)

Chairperson
Title

Tribal Tel. No.
7-4797
Area Code 06
Number
Ext.

Signature

October 15, 1976
Date

16. APPROVED:

Signature

Area Director
Title

Date

APPLICATION FOR P.L. 93-638 GRANT ASSISTANCE

Part III - BUDGET DATA

1. Object Class Categories (Budgeted line item description)	Column (A) Current Approved $	Column (B) Change Requested $	Column (C) New or Revised Budget $
a. Personnel (Specify)			24. 0.00
b. Emp. Benft. Contr. (EBC)			3 7.00
c. Travel			0.00
d. Equipment (Specify)			5 .00
e. Supplies			2, .00
f. Contractual Services			6, 00.00
g. Construction			-0-
h. Other (Specify)			.00
i. Total Direct Costs			37, .00
j. Indirect Costs (Specify)	Utilities		3.600.00
k. TOTAL			40. 0.00
l. Bureau Share			11,300.00
m. Other Federal Share			28. 0.00
n. Non-Federal Share			0.00

2. Detail on Indirect Costs:
Type of Rate Requested (Mark one)

___ Fixed with Carry Forward
___ Negotiated Lump Sum
___ Predetermined Fixed Rate
X Provisional

Rate _____ % Base $ _____ Total Amount $ 3,000.00

What is the basis for the proposed indirect cost rate?

$3,000.00 is being charged as basic utilities cost to program.

3. Program Income: Amount $ -0- Source: (See instructions)

BUDGET BREAKDOWN P.L 92-638 '7

ITEM	BIA	HUD 701	A	IA			TOTAL
Personnel	$ 5,040.	$ 6,400.	-0-	$12,000.	$ 880.		$24,320.
EBC	707.	960.	-0-	1,680.	-0-		3,347.
Supplies	300.	365.	$ 2,000.	-0-	-0-		2,665.
Utilities	-0-	-0-	3,000.	-0-	-0-		3,000.
Travel	600.	-0-	-0-	-0	-0-		600.
Equipment	653.	-0-	-0-	-0-	-0-		653.
Contractual Services	4,000.	2,000.	-0-	-0-	-0-		6,000.
Misc.	-0-	275.	-0-	-0-	-0-		275.
TOTALS	$11,300.	$10,000.	$ 5,000.	$13,680.	$ 880.		$40,860.

[illegible] [redacted] [illegible]

SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590
Telephone 267-4797

RECEIVED
HOQUIAM, WA
DEC 14 1976
BUREAU OF INDIAN AFFAIRS
WESTERN WASHINGTON AGENCY

RESOLUTION #12-7-76-65

SHOALWATER BAY TRIBE

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally recognized Tribe, headquartered on the Shoalwater Bay Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Tribe in accordance with its Constitution and By-Laws approved October 9, 1976, by the General Council; and

WHEREAS, The Shoalwater Bay Indian Tribe has made an application to the Bureau of Indian Affairs for P.L. 93-638 Grant monies; and

WHEREAS, The Shoalwater Bay Indian Tribe has made changes in its program functions for its P.L. 93-638 Grant; now

THEREFORE BE IT RESOLVED THAT THE Shoalwater Bay Indian Tribe wishes to change the grant program to read: Training in Tribal Operations and Reservation Program Development; and

BE IT FURTHER RESOLVED that the Shoalwater Bay Indian Tribe requests the Bureau of Indian Affairs to secure technical assistance monies in the greatest sums possible for its program, Redesigning Fiscal Management and Reporting Systems.

CERTIFICATION

The above Resolution was passed at a special meeting held at the Shoalwater Bay Tribal Office on December 7, 1976, at which a quorum was present. 2 for 0 against.

Rachel Whitish, Chairwoman
Shoalwater Bay Tribal Council

ATTEST:

Bruce Davis

Bruce Davis, Vice-Chairman
Shoalwater Bay Tribal Council

Certified Public Accountants

1500 One Washington Plaza
Tacoma, Washington 98402
Telephone 206-572-7111

Robert T. Knight (1901-1976)
Peter V. Vale
Wm. R. Gregory
Harry E. Shull
George F. Fisher
Wm. D. Brown
Cecil W. Rover
Robert H. Reepløeg
Hilton B. Gardner
Edward L. Strother
Fay Ellen Webb
Vincent E. Demarest
Charles F. Perry
Paul F. Brantner

KVG Knight, Vale & Gregory

June 17, 1977

Mr. Thomas Wilcox
Shoalwater Bay Tribal Council
Shoalwater Bay Indian Tribe
Tokeland, Washington 98590

Dear Mr. Wilcox:

We have reviewed the bookkeeping and accounting system used by the Shoalwater Bay Indian Tribe to account for Federal grants and contracts. In our opinion, the procedures used within the system which we observed and which were explained to us do not meet the standards of Section 276.7 of Appendix B of PL93-638 for the following reasons:

- Paragraph (a)(1) of Section 276.7 requires that the system provide "accurate, current and complete disclosure..." While the chart of accounts and the necessary books of original entry, including cash receipts and cash disbursement journals and a voucher register, have been set up, neither a general ledger nor a grant ledger has been established. The absence of these ledgers means that no controls are established to detect many errors and inaccuracies. Since the controls available from the use of these ledgers are not in use, the information generated by the system cannot be relied on to a degree sufficient to meet the requirement of the Federal regulation for accurate disclosure.

- Paragraph (a)(1) of Section 276.7 also requires that the system provide for the conversion of information generated from a non-accrual basis to an accrual basis if a grant or contract requires accrual basis reporting. Since a general ledger is not established, this conversion cannot be made with sufficient accuracy to meet the regulations.

- Paragraph (a)(3) of Section 276.7 requires that the system provide "effective control over and accountability for all grant and subgrant funds..." Since no grant ledger is established, effective control over these funds is not provided, and accountability by grant or contract cannot be provided with sufficient accuracy to meet the regulation.

The above mentioned deficiencies may be corrected by the installation of general and grant ledgers and the corresponding ledger controls. Other controls and necessary system components are presently established by the Tribe to meet the standards of Section 276.7 of Appendix B of PL93-638 if this work is completed.

Respectfully submitted,

Knight Vale Gregory

IN REPLY REFER TO:

Property & Supply

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

JUN 9 1977

Through: Superintendent, Western Washington Agency

Ms. Rachel Whitish, Chairperson
Shoalwater Bay Tribal Council
Tokeland, WA 98590

Dear Ms. Whitish:

I have reviewed the contract application for a Summer Youth Program from the Shoalwater Bay tribe and find no areas which may constitute grounds for declination. Your application is hereby approved and will be forwarded to our Contracting Officer for negotiation and award on or before July 6, 1977; however, please keep in mind that no advance of funds may be granted until a licensed C.P.A. certifies your accounting system as specified in 25 CFR 276.7.

If I can be of further assistance, please advise me at your earliest convenience.

Sincerely yours,

ACTING Area Director

NOTED AND FORWARDED

SUPERINTENDENT
WESTERN WASHINGTON AGENCY

CONFERENCE OF TRIBAL GOVERNMENTS

January 31, 1977:	Shoalwater Bay Tribal Council's request for P.L. 93-638 Training & Technical Assistance Funding to host the Conference of Tribal Governments.
March 28, 1977:	Grant Agreement No. P10614207016 awarded.

NOTE: Conversation between Roy Sampsel, Programs Officer, Portland Area Office, Bureau of Indian Affairs and Rachel Whitish, Chairwoman, Shoalwater Bay Tribal Council; Tom Wilcox, Business Manager, Shoalwater Bay Indian Tribe; and Shirley Keith, S.T.O.W.W. Legal Counsel, on March 22, 1977. Mr. Sampsel assured the Shoalwater Bay Tribe that being awarded this contract would not effect their eligibility for other Training & Technical Assistance funds.

SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590 Telephone 267-4797

RECEIVED
HOQUIAM, WA
JAN 31 1977
Hand Carried
BUREAU OF INDIAN AFFAIRS
WESTERN WASHINGTON AGENCY

RESOLUTION #01-29-77-09
SHOALWATER BAY INDIAN TRIBE

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington and;

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Tribe in accordance with its Constitution and;

WHEREAS it is the purpose of PL93-638 Indian Self Determination and Education Act to strengthen the government powers and protect tribal sovereignty and;

WHEREAS the Shoalwater Bay Indian Tribe sees the need to review progress made by all tribes in Washington State during the past several years and;

WHEREAS, the Shoalwater Bay Indian Tribe sees the need to set forth an Indian position statement of concerns and to formulate unified plans of action to resolve those concerns with the State of Washington.

WHEREAS, the Shoalwater Bay Indian Tribe has agreed to act as host Tribe to the Conference of Tribal Governments;

WHEREAS, the Conference of Tribal Governments will be a forum from which concerns will be formulated and;

WHEREAS the Shoalwater Bay Indian Tribe has not the financial resources to successfully finance a Conference of Tribal Governments;

THEREFORE, be it resolved that the Shoalwater Bay Indian Tribe is requesting PL93-638 funds in the greatest amounts possible to cover the cost of this conference.

CERTIFICATION

The above Resolution was passed at a Special Meeting held at the Shoalwater Bay Tribal Office on January 29, 1977, at which a quorum was present.
4 FOR 0 AGAINST.

Rachel Whitish
Rachel Whitish, Chairwoman
Shoalwater Bay Tribal Council

ATTEST:
Lynn [illegible]

RECEIVED
FEB 3 11 59 AM '
BUREAU OF INDIAN AFFAIRS
PORTLAND AREA

43456

ORDER FOR SUPPLIES OR SERVICES

PAGE 1

ISSUING OFFICE
Bureau of Indian Affairs
Portland Area Office
Box 3785, Portland, OR 97208

MARK ALL PACKAGES AND PAPERS WITH ORDER AND/OR CONTRACT NUMBERS

DATE OF ORDER	CONTRACT NO.	ORDER NO.
3-17-77	P10G14207016	7P10-0100638

ACCOUNTING AND APPROPRIATION DATA
P10-01 3200 2662 41Y

REQUISITIONING OFFICE
Western Washington Agency

CONTRACTOR (Name and address including ZIP code)
TO→ Shoalwater Bay Tribal Council
P. O. Box 579
Tokeland, WA 98590

SHIP TO (Consignee and address, including ZIP code)
Bureau of Indian Affairs
Western Washington Agency
3006 Colby, Federal Bldg.
Everett, WA 98201

TYPE OF ORDER
PURCHASE ☐
DELIVERY ☒

F.O.B. POINT	GOVERNMENT B/L NO.	DELIVERY TO F.O.B. POINT ON OR BEFORE	DISCOUNT TERMS
n/a	n/a	1-1-77 / 2-28-77	net

SCHEDULE

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY ORDERED	UNIT	UNIT PRICE	AMOUNT	QUANTITY ACCEPTED
	TRAINING & TECHNICAL ASSISTANCE PER 93-638					
1.	Conference of Tribal Governments as specified in above-numbered Grant Agreement.	NOT TO EXCEED---			$5,000.00	

Check ☐ SMALL BUSINESS ☐ OTHER THAN SMALL BUSINESS

LING INSTRUCTIONS ON REVERSE

GRAND TOTAL → $5,000.00

UNITED STATES OF AMERICA
BY M L Carter
NAME (Typed) M. L. Carter

ignee

c. Typed or Printed .
M. L. Carter, Grants .

d. Date Signed 3-17-77

✓ EXPEDITE
PL-638 MATERIAL

MAY 27 1977

RECEIVED

SHOALWATER BAY INDIAN TRIBE

PROGRAM PLANNING & COORDINATION CONTRACT PROPOSAL

CONTENTS

1. Resolution #05-25-77-25
2. P.L. 93-638 Contract Application
3. Attachment (1) - Budget
4. Attachment (2) - Thirty (30) Day Budget
5. Attachment (3) - Job Description - Program Planner & Coordinator
6. Attachment (4) - Organization Chart

Shoalwater Bay Tribal Council
Shoalwater Bay Indian Tribe
P.O. Box 579
Tokeland, Washington 98590

SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590
Telephone 267-4797

RECEIVED
HOQUIAM, WA
MAY 27 1977
BUREAU OF INDIAN AFFAIRS
WESTERN WASHINGTON AGENCY

RESOLUTION #05-25-77-25

SHOALWATER BAY INDIAN TRIBE

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance with its Constitution; and

WHEREAS, The Shoalwater Bay Indian Tribe has proposed a Program Planning and Coordination Program for Fiscal Year 1978 and is requesting assistance from the Bureau of Indian Affairs in the implementation and financing of this program through P.L. 93-638 contracting; now

THEREFORE BE IT RESOLVED, That the Shoalwater Bay Indian Tribe has authorized the Chairperson, Shoalwater Bay Tribal Council to negotiate, amend and execute this contract and any amendments for the duration of the contract beginning October 1, 1977 through September 30, 1978.

CERTIFICATION

The above Resolution was passed at a Special Meeting held at the Shoalwater Bay Tribal Office on May 25, 1977, at which a quorum was present.
__3__ FOR __0__ AGAINST.

Rachel Whitish
Rachel Whitish, Chairwoman
Shoalwater Bay Tribal Council

ATTEST:

Joan Rosander
Joan Rosander, Secretary
Shoalwater Bay Tribal Council

PROGRAM PLANNING & COORDINATION CONTRACT PROPOSAL

A. FULL NAME, ADDRESS AND TELEPHONE NUMBER OF TRIBAL ORGANIZATION

Shoalwater Bay Tribal Council
Shoalwater Bay Indian Tribe
P.O. Box 579
Tokeland, Washington 98590
Phone: 267-4797 or 267-4977

B. FULL NAME OF TRIBE(S) WHICH THE TRIBAL ORGANIZATION IS AFFILIATED

Shoalwater Bay Indian Tribe

C. NAME OF TRIBE BENEFITING OR RECEIVING SERVICES

Shoalwater Bay Indian Tribe

D. TRIBAL REQUEST TO CONTRACT

Resolution #05-25-77-25

E. DATE OF SUBMISSION TO BUREAU & NAME OF OFFICE WHERE APPLICATION WAS SUBMITTED

May 26, 1977

U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
Hoquiam Field Station
P.O. Box 120
Hoquiam, Washington 98550

F. SIGNATURE OF AUTHORIZED REPRESENTATIVE OF TRIBAL ORGANIZATION & DATE

Rachel Whitish
Rachel Whitish, Chairwoman

May 25, 1977
Date

G. NUMBER OF INDIVIDUALS TO BE BENEFITTED

Eighty-two (82)

H. DESCRIPTIVE NARRATIVE OF PROGRAM

This contract will enable the Shoalwater Bay Indian Tribe to coordinate goals and objectives mutually shared by various programs.

Many of the Service Programs provided by the B.I.A., State and other Federal agencies have segements which duplicate services delivered to the Tribe. Such is the case in Juvenile Prevention (Law Enforcement)

Summer Youth Programs and the Heritage Program. Each of these programs strive to instill in the youth a sense of worth and self-esteem in order to reduce the alarming drop-out rates and juvenile delinquency. The Program Planning Coordinator will be able to evaluate and combine such services to make a more worthwhile effort on the part of all programs involved.

The other prime objective of this program is to make full use of B.I.A. services available to the individual Tribal Members (Education, Employment Assistance, Vocational Training, Social Services etc.). In order to do this, it is necessary to have knowledge of these programs and the services they provide. We lack this type of information on the tribal level at present, and we feel this goal is essential to the health, education, and welfare of all Tribal Members.

I. PALN OF OPERATION

1. Goal & Objectives - The Program Planning Coordinator will coordinate the following:

   a) services of the B.I.A. in Social Services, Employment Assistance, Education and Housing Improvement Programs with the needs of Tribal Members.

   b) on going programs of the Tribe, (i.e. Heritage, Summer Youth) to ensure the needs of the Tribe are being met.

   c) B.I.A. programs with Tribal and other Federal and State Programs in the areas of health, education and welfare for the Shoalwater Bay Indian Tribe.

   d) work to achieve a comprehensive delivery system of needed services for Tribal Members through program planning and coordination.

2. The Organization, Methods and Procedures -

   a) Through surveys, needs assessments and tribal requests for services, the Coordinator will then be able to determine the extent of service delivery.

   b) Through evaluations of existing programs and their service delivery the coordinator will be able to determine the extent of service delivery.

   c) Through evaluation and program planning the coordinator will achieve necessary information of which Tribal, Federal, and State Programs will best fit the needs of individual Tribal Members.

   d) Using the techniques of suveys, needs assessments, evaluations and program planning, the coordinator will be able to develop a comprehensive plan for delivery of services based on tribal needs.

3. A Means to Measure Progress -

    a) Progress reports will be furnished to the Contracting Officer on a monthly basis.

    b) A final report will be furnished at the end of the contracting period.

4. Budget - See Attachment (1)

5. Staffing Plan - Except for the position of Program Planning Coordinator, the administrative staff currently employed by the Shoalwater Bay Indian Tribe will be responsible for the general maintenance of this contract.

    a) The overall supervision will be the function of the Chairperson, Shoalwater Bay Tribal Council.

    b) Day to day supervision of the program will be the responsibility of the Business Manager, Shoalwater Bay Indian Tribe.

    c) Program operation will be the responsibility of the Program Planning Coordinator.

6. Evaluation Method -

    a) The Tribal Program Planning Coordinator will meet with the Tribal Council, Education Committee, Planning Committee, Health Committee and Housing Authority on a bi-weekly basis. During the summer months the Summer Youth Coordinator will also be included in these meetings.

    b) Questionnaires will be mailed out every six (6) months to find out if services are being delivered in a more satisfactory manner and if there are problems which are not being dealth with.

J. STATEMENT OF TRIBAL KNOWLEDGE OF PROGRAM

Community Health Representative (I.H.S. - D.H.E.W.)
Tribal Government Development Program (T.G.D.P.)
H.U.D. 701
Law & Justice Planning (L.E.A.A. & B.I.A.)

K. DESCRIPTION OF PERSONNEL SYSTEM AND POSITION DESCRIPTIONS OF KEY PERSONNEL

1. Personnel System - On File:
U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

2. Key Personnel -

   a) The Chairperson of the Shoalwater Bay Tribal Council shall have the authority to negotiate, amend and contract with the Bureau of Indian Affairs, until the expiration of his or her term of office.

   b) The Business Manager, Shoalwater Bay Indian Tribe, shall approve all expenditures which will be documented and supported by invoices.

   c) The Bookkeeper shall maintain a separate account which shall be maintained solely for this contract.

   d) The Program Planning Coordinator shall be responsible for carrying out all objectives described in this contract.

L. EQUIPMENT, FACILITIES & BUILDINGS

Because of the location and scope of this proposal, neither government equipment nor buildings will be necessary for the completion of this contract.

M. CPA CERTIFICATION OF TRIBE'S CAPABILITY IN ACCOUNTING PROCEDURES

The Shoalwater Bay Tribal Council hereby agrees to have their bookkeeping and accounting system certified before the Bureau of Indian Affairs disburses any funds under a contract awarded as a result of this application.

N. PROPERTY MANAGEMENT AND RECORD KEEPING SYSTEM

On File: U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

O. ADVANCE PAYMENT REQUIRED

Thirty percent (30%) advance is to be deposited in IIM account established at the Western Washington Agency.

P. TERM OF CONTRACT

October 1, 1977 through September 30, 1978

Q. INDIRECT COST RATE

The Shoalwater Bay Indian Tribe does not have an Indirect Cost Rate; however, a proposal shall be submitted to OIA within sixty (60) days.

R. TRIBAL INSURANCE POLICY

On File: U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

S. STATEMENT ASSURING CONSISTENT DELIVERY OF SERVICES TO INDIANS IN A FAIR & UNIFORM MANNER

The Shoalwater Bay Indian Tribe employs the following procedure to assure that services and assistance is provided to the benefiting Indian people in a fair and uniform manner:

1. Eligibility criteria for a Tribal Member to receive services.

2. Record keeping adequate to verify the fairness and uniformity of services in case of formal complaints.

3. An adequate complaint procedure available to all Indian affected.

4. Those rights the individual will retain following the complaint.

T. NAME AND TITLE OF CONTRACTING OFFICER'S REPRESENTATIVE

Donald Smouse
Reservation Programs Officer
U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

SHOALWATER BAY INDIAN TRIBE

PROGRAM PLANNING & COORDINATION CONTRACT PROPOSAL

BUDGET

1.	Salary		$10,008.00
2.	Fringe Benefits		1,501.20
3.	Travel:		
	a. Mileage (5,000 miles @$.15 per mile)		750.00
	b. Per Diem (30 days @$33.00 per day)		990.00
4.	Training & Technical Meetings (Registration)		250.00
5.	Office Rental		360.00
6.	Equipment Rental		
	a. IBM Typewriter	$432.00	
	b. Photocopier	240.00	
			672.00
7.	Supplies		500.00
8.	Utilities		400.00
9.	Telephone Service		600.00
10.	Audit & Legal Services		100.00
	TOTAL		$16,131.20

ATTACHMENT (1)

SHOALWATER BAY INDIAN TRIBE

PROGRAM PLANNING & COORDINATION CONTRACT PROPOSAL

THIRTY (30) DAY BUDGET

1.	Salary		$ 834.00
2.	Fringe Benefits		125.10
3.	Travel:		
	a. Mileage		62.50
	b. Per Diem		82.50
4.	Training & Technical Meetings (Regs)		20.83
5.	Office Rental		30.00
6.	Equipment Rental		
	a. IBM Typewriter	$36.00	
	b. Photocopier	20.00	
			56.00
7.	Supplies		41.66
8.	Utilities		33.33
9.	Telephone Service		50.00
* 10.	Audit & Legal Services ($100)		
	TOTAL		$1,335.92

* Audit & Legal Services ($100.00) is a one time expense in the last month of contract period.

ATTACHMENT (2)

SHOALWATER BAY INDIAN TRIBE

JOB DESCRIPTION

PROGRAM PLANNING COORDINATOR

RESPONSIBILITY:

THE PROGRAM PLANNING COORDINATOR SHALL WORK UNDER THE GENERAL SUPERVISION OF THE BUSINESS MANAGER, SHOALWATER BAY INDIAN TRIBE

DUTIES:

1. Become acquainted with Bureau of Indian Affairs, State and other Federal agencies and the types of services they provide to the members of the Shoalwater Bay Indian Tribe.

2. To evaluate these programs and determine if the services available are adequately meeting the needs of Tribal Members.

3. Coordinate Tribal programs to avoid duplication and to determine which program services will best fill the individual needs.

4. Contract for new services as they become available.

5. Be directly responsible for assisting Tribal Members in Education, Vocational Education, Employment Assistance and Social Services.

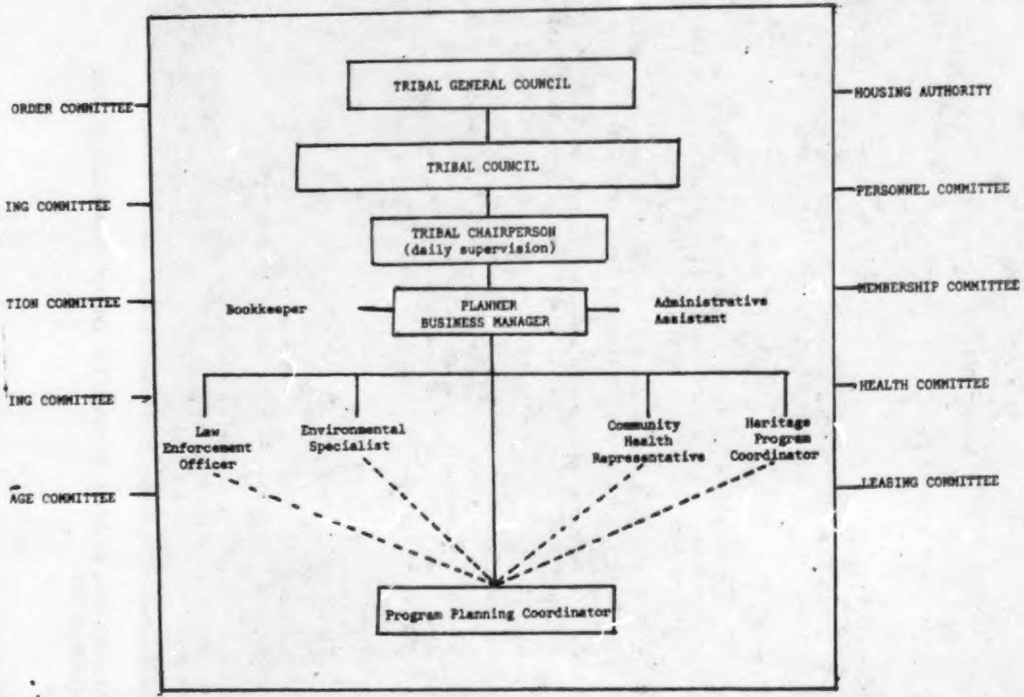
QUALIFICATIONS:

1. High School Diploma or GED
2. Experience in Program Administration
3. Knowledge of Grant and Contract writing and maintenance.
4. Ability to communicate with all age groups both orally and in writing.
5. Must be able to work with minimum supervision.
6. Typing ability preferred.

PREFERENCE WILL BE GIVEN TO QUALIFIED INDIANS REGARDLESS OF AGE, RELIGION OR SEX.

ATTACHMENT (3)

SHOALWATER BAY TRIBAL ORGANIZATION



ATTACHMENT (4)

IN REPLY REFER TO:
CONTRACTS 93-638
Shoalwater

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Western Washington Agency
Hoquiam Field Station
P. O. Box 120, Post Office Bldg.
Hoquiam, Washington 98550

June 9, 1977

Ms. Rachel Whitish
Chairwoman, Shoalwater Bay
Tribal Council
Tokeland, Washington 98590

Dear Rachel:

We received your Resolutions No. 05-25-77-25 and No. 05-25-77-26 and
have completed our review here and in Everett. We cannot locate funds
to cover the contract proposals. There is some question as to the
type of agreement you are seeking under 93-638. Grant or Contract.
It also appears as though we would have to provide funds now allocated
to positions as there are no funds tentatively allocated for contracts
in FY-78.

I know your intent in filing your request for contracts is to improve
your staff capabilities in coordinating Bureau and other Federal
Agency services. I concur in your need, but feel we will continue to
run into funding problems and will not be able to meet your needs with
this approach. Therefore, I am returning your request and resolutions
for further consideration on your part. I feel we should meet on this
to discuss another approach which will have a better chance at receiv-
ing attention and funding.

I would also appreciate it if you could withdraw these applications or
request that we hold them in suspense until we can meet to discuss them.

Sincerely yours,

Dean L. Wilkinson
Assistant Superintendent

Enclosures

EXPEDITE
PL-638 MATERIAL
MAY 27 1977
Hoquiam
RECEIVED

SHOALWATER BAY INDIAN TRIBE

NATURAL RESOURCES DEVELOPMENT TECHNICIAN

CONTRACT PROPOSAL

CONTENTS

1. Resolution #05-25-77-26
2. P.L. 93-638 Contract Application
3. Attachment (1) - Budget
4. Attachment (2) - Thirty (30) Day Budget
5. Attachment (3) - Job Description
6. Attachment (4) - Organization Chart

RECEIVED
1977
BUREAU OF INDIAN AFFAIRS
WESTERN WASHINGTON AGENCY

Shoalwater Bay Tribal Council
Shoalwater Bay Indian Tribe
P.O. Box 579
Tokeland, Washington 98590

RECEIVED
BUREAU OF INDIAN AFFAIRS
WESTERN WASHINGTON AGENCY
JUN 6 1977

SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590
Telephone 267-4797

RECEIVED
HOQUIAM, WA
MAY 27 1977
BUREAU OF INDIAN AFFAIRS
WESTERN WASHINGTON AGENCY

RESOLUTION #05-25-77-26

SHOALWATER BAY INDIAN TRIBE

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance with its Constitution; and

WHEREAS, The Shoalwater Bay Indian Tribe has proposed a Natural Resources Development Program for Fiscal Year 1978 and is requesting assistance from the Bureau of Indian Affairs in the implementation and financing of this program through P.L. 93-638 contracting; now

THEREFORE BE IT RESOLVED, That the Shoalwater Bay Indian Tribe has authorized the Chairperson, Shoalwater Bay Tribal Council to negotiate, amend and execute this contract and any amendments for the duration of the contract beginning October 1, 1977 through September 30, 1978.

CERTIFICATION

The above Resolution was passed at a Special Meeting held at the Shoalwater Bay Tribal Office on May 25, 1977, at which a quorum was present.
3 FOR 0 AGAINST.

Rachel Whitish
Rachel Whitish, Chairwoman
Shoalwater Bay Tribal Council

ATTEST:

Joan Rosander
Joan Rosander, Secretary
Shoalwater Bay Tribal Council

NATURAL RESOURCES DEVELOPMENT TECHNICIAN
CONTRACT PROPOSAL

A. FULL NAME, ADDRESS AND TELEPHONE NUMBER OF TRIBAL ORGANIZATION

Shoalwater Bay Tribal Council
Shoalwater Bay Indian Tribe
P.O. Box 579
Tokeland, Washington 98590
Phone: 267-4797 or 267-4977

B. FULL NAME OF TRIBE(S) WHICH THE TRIBAL ORGANIZATION IS AFFILIATED

Shoalwater Bay Indian Tribe

C. NAME OF TRIBE BENEFITING OR RECEIVING SERVICES

Shoalwater Bay Indian Tribe

D. TRIBAL REQUEST TO CONTRACT

Resolution # 05-25-77-26

E. DATE OF SUBMISSION TO BUREAU & NAME OF OFFICE WHERE APPLICATION WAS SUBMITTED

May 26, 1977

U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
Hoquiam Field Station
P.O. Box 120
Hoquiam, Washington 98550

F. SIGNATURE OF AUTHORIZED REPRESENTATIVE OF TRIBAL ORGANIZATION & DATE

Rachel Whitish
Rachel Whitish, Chairwoman

May 25, 1977
Date

G. NUMBER OF INDIVIDUALS TO BE BENEFITTED

Eighty-two (82)

H. DESCRIPTIVE NARRATIVE OF PROGRAM

During the past year the Shoalwater Bay Indian Tribe has been involved in Comprehensive Planning efforts which will plan the future of social and economic development on the Reservation. In the planning process the Tribe has identified many areas of their Natural Resources that have potential for economic development.

We plan to start developing that potential by having on staff someone with the needed background in economics, planning and natural resources to implement programs of economic development based on our natural resource potential.

The extent to which Bureau of Indian Affairs' programs or portions of programs to be contracted will have to be determined in negotiations at the Agency and Area Office levels.

I. PLAN OF OPERATION

1. Goals & Objectives -

   a) Coordinate at the Tribal level resource studies for economic development (i.e. water inventories, timber surveys, land consolidation planning, land acquisition, feasibility studies).

   b) Coordinate with Trustee development of natural resources.

   c) Study, plan and implement projects of economic development involving natural resources (i.e. acquaculture, agriculture, forestry etc.)

   d) Devise a work plan for Natural Resource Development with a time line for economic self-sufficiency.

2. The Organization, Methods and Procedures -

   a) Based on work involved in the first phase of the Comprehensive Plan of the Shoalwater Bay Indian Tribe, the Development Technician will accelerate and implement resource studies on-going or planned as they relate to economic development efforts.

   b) Development Technician will work with Bureau personnel involved with the protection of Trust Natural Resources to insure that economic development efforts are in the best interest of Tribal needs and federal codes and regulations.

   c) Evaluations, surveys, and feasibility studies will be used by the Development Technician to plan and implement projects of economic development using our water and land resources. Proposed project will include aquaculture, agriculture and forestry.

   d) Using evaluations of proposed projects and studies relating to the projects the Development Technician will be able to phase projects based on their potential.

3. A Means to Measure Progress -

   a) Progress reports will be furnished to the Contracting Offier on a monthly basis accompanied by any studies, plans or project proposals for Natural Resource Development.

   b) A final report will be furnished at the end of the contracting period.

4. Budget - See Attachment (1)

5. Staffing Plan - Except for the position of Natural Resources Development Technician, the administrative staff currently employed by the Shoalwater Bay Indian Tribe will be responsible for general maintenance of this contract.

   a) The overall supervision will be the function of the Chairperson, Shoalwater Bay Tribal Council.

   b) Day to day supervision of the program will be the responsibility of the Business Manager, Shoalwater Bay Indian Tribe.

   c) Program operation will be the responsibility of the Natural Resources Development Technician.

   d) Technical Assistance will be asked of the Bureau of Indian Affairs in the following fields: Forestry; Water Resources; Realty; Industrial Development; and Finance.

6. Evaluation Method -

   a) The Natural Resources Development Technician will meet with the Tribal Council and Planner/Manager on a bi-weekly basis.

   b) Reports will be delivered to the General Council when they meet.

   c) Economic Development will be charted on a monthly basis to ensure that projected goals are being met.

J. STATEMENT OF TRIBAL KNOWLEDGE OF PROGRAM

HUD 701
T.D.G.P. (B.I.A.)
P.L. 93-638 Grant, 1976 (B.I.A.

K. DESCRIPTION OF PERSONNEL SYSTEM AND POSITION DESCRIPTIONS OF KEY PERSONNEL

1. Personnel System - On File: U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby- Federal Building
Everett, Washington 98201

2. Key Personnel -

   a) The Chairperson of the Shoalwater Bay Tribal Council shall have the authority to negotiate, amend, and contract with the Bureau of Indian Affairs, until the expiration of his or her term of office.

   b) The Business Manager, Shoalwater Bay Indian Tribe, shall approve all expenditures which will be documented and supported by invoices.

   c) The Bookkeeper shall maintain a separate account which shall be maintained solely for this contract.

   d) The Natural Resources Development Technician shall be responsible for carrying out all objectives described in this contract.

L. EQUIPMENT, FACILITIES & BUILDINGS

Because of the location and scope of this proposal, neither government equipment nor buildings will be necessary for the completion of this contract.

M. CPA CERTIFICATION OF TRIBE'S CAPABILITY IN ACCOUNTING PROCEDURES

The Shoalwater Bay Tribal Council hereby agrees to have their bookkeeping and accounting system certified before the Bureau of Indian Affairs disburses any funds under a contract awarded as a result of this application.

N. PROPOERTY MANAGEMENT AND RECORD KEEPING SYSTEM

On File: U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

O. ADVANCE PAYMENT REQUIRED

Thirty percent (30%) advance is to be deposited in IIM account established at the Western Washington Agency.

P. TERM OF CONTRACT

October 1, 1977 through September 30, 1978

Q. INDIRECT COST RATE

The Shoalwater Bay Indian Tribe does not have an Indirect Cost Rate; however, a proposal shall be submitted to OIA within sixty (60) days.

R. TRIBAL INSURANCE POLICY

On File: U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

S. STATEMENT ASSURING CONSISTENT DELIVERY OF SERVICES TO INDIANS IN A FAIR & UNIFORM MANNER

The Shoalwater Bay Indian Tribe employs the following procedure to assure that services and assistance is provided to the benefiting Indian people in a fair and uniform manner:

1. Eligibility criteria for a Tribal Member to receive services.
2. Record keeping adequate to verify the fairness and uniformity of services in case of formal complaints.
3. An adequate complaint procedure available to all Indians affected.
4. Those rights the individual will retain following the complaint.

T. NAME AND TITLE OF CONTRACTING OFFICER'S REPRESENTATIVE

O'Dean Williamson
Assistant Superintendent
U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
P.O. Box 120
Hoquiam, Washington 98550

SHOALWATER BAY INDIAN TRIBE

NATURAL RESOURCES DEVELOPMENT TECHNICIAN

CONTRACT PROPOSAL

BUDGET

1.	Salary ($1,000.00 x six (6) months) ($1,050.00 x six (6) months)	$12,300.00
2.	Fringe Benefits	1,845.00
3.	Travel:	
	a. Mileage (5,000 miles @$.15 per mile)	750.00
	b. Per Diem (30 days @$33.00 per day)	990.00
4.	Office Rental	360.00
5.	Equipment Rental	240.00
6.	Supplies	700.00
7.	Utilities	400.00
8.	Telephone Services	900.00
9.	Training & Technical Meetings (Registration)	250.00
10.	Audit & Legal Services	100.00
11.	Consultants-Land Use & Economic ($100.00 per day x 30 days)	3,000.00
	TOTAL	$21,835.00

ATTACHMENT (1)

SHOALWATER BAY INDIAN TRIBE

NATURAL RESOURCES DEVELOPMENT TECHNICIAN

CONTRACT PROPOSAL

THIRTY (30) DAY BUDGET

1.	Salary ($1,050.00 per month last six months)	$ 1,000.00
2.	Fringe Benefits ($157.50 per month last six months)	150.00
3.	Travel	
	a. Mileage	62.50
	b. Per Diem	82.50
4.	Office Rental	30.00
5.	Equipment Rental	20.00
6.	Supplies	58.33
7.	Utilities	33.33
8.	Telephone Services	75.00
9.	Training & Technical Meetings (Registration)	20.83
* 10.	Audit & Legal Services ($100.00)	
** 11.	Consultants ($3,000.00)	
	TOTAL	$ 1,532.49

* Audit & Legal Services - this will be a one time expense in the last month of contracting.

** Consultants - The times in which consultants will be used is at this time undetermined.

ATTACHMENT (2)

SHOALWATER BAY INDIAN TRIBE

JOB DESCRIPTION

NATURAL RESOURCES DEVELOPMENT TECHNICIAN

RESPONSIBILITY:

THE NATURAL RESOURCES DEVELOPMENT TECHNICIAN SHALL WORK UNDER THE GENERAL SUPERVISION OF THE BUSINESS MANAGER, SHOALWATER BAY INDIAN TRIBE.

DUTIES:

1. Coordinate on-going and planned studies involving our land and water resources for economic development.
2. Coordinate efforts of technical assistance from B.I.A. and other sources.
3. Work with Consultants in planning efforts.
4. Work independently in generating sources of data and capital needed to implement projects such as aquaculture, salmon release/recapture, agriculture etc.
5. Work with Planner/Manager in developing an economic time line for economic self-sufficiency.

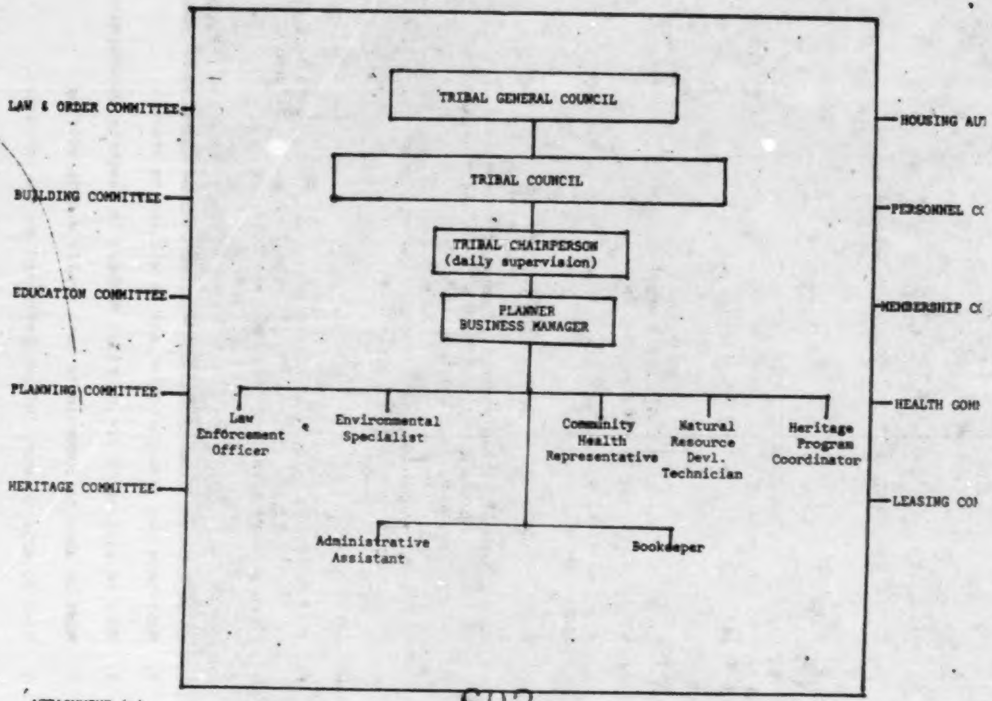
QUALIFICATIONS:

1. Must have a Bachelor's of Arts Degree in Biology, Economics, or related fields to have the basic background for natural resource development and economic development.
2. Prefer two (2) to three (3) years work experience in natural resource development and economic development.
3. Must have own transportation and be willing to travel.
4. Must be willing to train Tribal Members in Resource Development.
5. Must be able to communicate both orally and in writing
6. Must be able to work independently and on own intiative.

PREFERENCE WILL BE GIVEN TO QUALIFIED INDIANS REGARDLESS OF AGE, RELIGION OR SEX.

ATTACHMENT (3)

SHOALWATER BAY TRIBAL ORGANIZATION



ATTACHMENT (4)

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Western Washington Agency
3006 Colby Avenue--Federal Building
Everett, WA 98201

Reservation Programs

July 8, 1977

Ms. Rachel Whitish, Chairman
Shoalwater Bay Tribal Council
Tokeland, WA 98590

RE: Program Study & Redesign Proposal No. 8P10-0100010

Dear Ms. Whitish:

We have conferred with appropriate officials of the Portland Area Office regarding your Contract Proposal No. 8P10-0100010, "Program Study & Redesign." We are advised the P. L. 93-638 Grants process must be followed by tribes to apply for P. L. 93-638 Training and Technical Assistance.

We request, therefore, that you provide our office with your proposal in the format and process required for P. L. 93-638 Grant application.

The Agency does not have for FY 1978:

1. tentative allocations for services of the nature requested;
2. tentative allocation for Training and Technical Assistance funds.

We must, therefore, identify alternatives:

1. to assign the project to Agency staff to complete;
2. to request staff assistance from line offices above the Agency;
3. to seek funds from the Portland Area Office and/or other federal sources.

We will actively support your efforts to maximize Bureau assistance to the Shoalwater Bay Indian Tribe. We must advise you that financial assistance will have to come from sources other than Western Washington Agency.

Sincerely yours,

Superintendent

[illegible]
Reservation Program

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Western Washington Agency
3006 Colby Avenue, Federal Building
Everett, WA 98201

July 5, 1977

Ms. Rachel Whitish, Chairperson
Shoalwater Bay Tribal Council
Tokeland, WA 98590

Dear Ms. Whitish:

This is to acknowledge that we have received your Self-Determination contract application on June 29, 1977 for the project entitled Program Study & Design. I will complete a detailed review of your application by July 29, 1977. We have assigned the following number 8P10-0100010 to the application. This number will be used to identify the application and project in the future. It will be helpful if any correspondence in reference to this application or project will refer to the above number.

Sincerely yours,

John P. [illegible]
Superintendent

SHOALWATER BAY INDIAN TRIBE

PROGRAM STUDY & REDESIGN

CONTRACT PROPOSAL

CONTENTS

1. Resolution #06-27-77-83
2. P.L. 93-638 Contract Application
3. Attachment (1) - Budget
4. Attachment (2) - Thirty (30) Day Budget
5. Attachment (3) - Job Description
6. Attachment (4) - Organization Chart

Shoalwater Bay Tribal Council
Shoalwater Bay Indian Tribe
P.O. Box 579
Tokeland, Washington 98590

SHOALWATER BAY INDIAN TRIBE

[illegible], Washington, 98590 Telephone 267-4797

[illegible]-33

[illegible] TRIBE

[illegible] Shoalwater [illegible] Tribe is a Federally recognized Tribe [illegible] on the [illegible] Reservation in the State of Washington; [illegible]

[illegible] is the governing body of the Shoalwater Bay [illegible] with its Constitution; and

[illegible] has proposed a Program Study & Redesign for Fiscal [illegible] requesting assistance from the Bureau of Indian Affairs [illegible] Technical Assistance, in the implementation and [illegible] through P.L. 93-638 contracting; now

THEREFORE BE IT RESOLVED [illegible] Shoalwater Bay Indian Tribe has authorized the Chairperson [illegible] Shoalwater Bay Tribal Council to negotiate, amend and execute this [illegible] and any amendments for the duration of the contract beginning October 1, 1977 through September 30, 1978.

CERTIFICATION

The above Resolution was passed at a Special Meeting held at the Shoalwater Bay Tribal Office on June 27, 1977, at which a quorum was present.

3 FOR 0 AGAINST.

Rachel Whitish

Rachel Whitish, Chairwoman
Shoalwater Bay Tribal Council

ATTEST:

Joan McBride

Joan Rosander McBride, Secretary
Shoalwater Bay Tribal Council

PROGRAM STUDY & REDESIGN

CONTRACT PROPOSAL

A. FULL NAME, ADDRESS AND TELEPHONE NUMBER OF TRIBAL ORGANIZATION

Shoalwater Bay Tribal Council
Shoalwater Bay Indian Tribe
P.O. Box 579
Tokeland, Washington 98590
Phone: 267-4797 or 267-4977

B. FULL NAME OF TRIBE(S) WHICH THE TRIBAL ORGANIZATION IS AFFILIATED

Shoalwater Bay Indian Tribe

C. NAME OF TRIBE BENEFITING OR RECEIVING SERVICES

Shoalwater Bay Indian Tribe

D. TRIBAL REQUEST TO CONTRACT

Resolution #06-27-77-33

E. DATE OF SUBMISSION TO BUREAU & NAME OF OFFICE WHERE APPLICATION WAS SUBMITTED

June 28, 1977

U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
Hoquiam Field Station
P.O. Box 120
Hoquiam, Washington 98550

F. SIGNATURE OF AUTHORIZED REPRESENTATIVE OF TRIBAL ORGANIZATION & DATE

Rachel Whitish, Chairwoman
Shoalwater Bay Tribal Council

Date

G. NUMBER OF INDIVIDUALS TO BE BENEFITTED

Eighty-two (82)

H. DESCRIPTIVE NARRATIVE OF PROGRAM

One of the primary functions of the Bureau of Indian Affairs is to provide certain programs and services to all federally recognized Indian Tribes. By law, all tribes, regardless of size, are entitled to benefit from these services.

In print, as is often the case, this is fairly easy to accomplish. In reality, small tribes, with the Bureau's definition of "less need", are often subject to deferred services or none at all.

In order to keep the Bureau informed of Tribal needs it is necessary to first "gain the ear" of a specific department. This not always easy to do when one department head has to divide his time among twenty-three (23) tribes.

A multi-tribe agency, such as the Western Washington Agency, must prioritize service delivery and program information. Therefore, a large tribe with two thousand (2,000) members in given a higher priority rating than our tribe with eighty-two (82) members, even though the needs of eighty-two (82) people are felt as greatly by those people as by the two thousand (2,000).

With Training & Technical Assistance funds, provided by the Bureau, the Shoalwater Bay Indian Tribe will complete a comprehensive study of Bureau Program information and service delivery. This study will enable us to redesign programs so they will fill the needs of all tribes, large and small.

I. PLAN OF OPERATION

1. Goals & Objectives - To redesign Bureau programs to achieve and maintain:

   a) at the Tribal level a system of program delivery ~~that~~ meets the optimum needs of the Shoalwater Bay Indian People.

   b) at the Tribal and Bureau level a system of program needs and information exchange.

2. The Organization, Methods and Procedures -

   a) A comprehensive study will be made of programs and their service delivery to the Tribe. The study will include:

      1) those programs the Tribe or Tribal Members have utilized in the past and present and the degree to which service delivery has met Tribal needs.

      2) those programs the Tribe or Tribal Members are entitled to, but are not receiving.

      3) those systems Program Officers now employ to determine Tribal needs and program dissemination.

      4) those services which are duplicated by Bureau, other Federal, State and Tribal programs.

   b) Develop model alternative systems which can deliver program services and information on a equitable basis.

3. Means to Measure Progress -

   a) Progress reports will be furnished to the Contracting Officer on a monthly basis.

   b) A final report will be furnished at the end of the contracting period.

4. Budget - See Attachment (1)

5. Staffing Plan - Except for the position of Program Planner, the administrative staff currently employed by the Shoalwater Bay Indian Tribe will be responsible for the general maintenance of this contract.

   a) The overall supervision will be the function of the Chairperson, Shoalwater Bay Tribal Council.

   b) Day to day supervision of the program will be the responsibility of the Business Manager, Shoalwater Bay Indian Tribe.

   c) Program operation will be the responsibility of the Program Planner.

6. Evaluation Method -

   a) The Tribal Program Planner will meet with the Tribal Council and other Tribal committees on a bi-weekly basis.

   b) The Tribal Program Planner will meet with Bureau of Indian Affairs department heads to discuss and evaluate results of studies on their respective departments.

   c) The Bureau of Indian Affairs will be requested to provide technical assistance for evaluation of records, reports and files.

J. STATEMENT OF TRIBAL KNOWLEDGE OF PROGRAM

Community Health Representative (I.H.S. - D.H.E.W.)
Tribal Government Development Program (T.G.D.P.)
H.U.D. 701
Law & Justice Planning (L.E.A.A. & B.I.A.)

K. DESCRIPTION OF PERSONNEL SYSTEM AND POSITION DESCRIPTIONS OF KEY PERSONNEL

1. Personnel System - On File: U.S. Department of Interior
   Bureau of Indian Affairs
   Western Washington Agency
   3006 Colby - Federal Building
   Everett, Washington 98201

2. Key Personnel -

   a) The Chairperson of the Shoalwater Bay Tribal Council shall have the authority to negotiate, amend and contract with the Bureau of Indian Affairs, until the expiration of his or her term of office.

   b) The Business Manager, Shoalwater Bay Indian Tribe, shall approve all expenditures which will be documented and supported by invoices.

   c) The Bookkeeper shall maintain a separate account which shall be maintained solely for this contract.

   d) The Program Planner shall be responsible for carrying out all objectives described in this contract.

   e) The Bureau of Indian Affairs shall be responsible for providing assistance in the form of information, files and other necessary data necessary for the completion of this contract.

L. EQUIPMENT, FACILITIES & BUILDINGS

Because of the location and scope of this proposal, neither government equipment nor buildings will be necessary for the completion of this contract.

M. CPA CERTIFICATION OF TRIBE'S CAPABILITY IN ACCOUNTING PROCEDURES

The Shoalwater Bay Tribal Council hereby agrees to have their bookkeeping and accounting system certified before the Bureau of Indian Affairs disburses any funds under a contract awarded as a result of this application.

N. PROPERTY MANAGEMENT AND RECORD KEEPING SYSTEM

On File: U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

O. ADVANCE PAYMENT REQUIRED

Thirty percent (30%) advance is to be deposited in IIM account established at the Western Washington Agency.

P. TERM OF CONTRACT

October 1, 1977 through September 30, 1978

Q. INDIRECT COST RATE

The Shoalwater Bay Indian Tribe does not have an Indirect Cost Rate; however, a proposal shall be submitted to OIA within sixty (60) days.

R. TRIBAL INSURANCE POLICY

On File: U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

S. STATEMENT ASSURING CONSISTENT DELIVERY OF SERVICES TO INDIANS IN A FAIR & UNIFORM MANNER

The Shoalwater Bay Indian Tribe employs the following procedure to assure that services and assistance is provided to the benefiting Indian people in a fair and uniform manner:

1. Eligibility criteria for a Tribal Member to receive services.
2. Record keeping adequate to verify the fairness and uniformity of services in case of formal complaints.
3. An adequate complaint procedure available to all Indian affected.
4. Those rights the individual will retain following the complaint.

T. NAME AND TITLE OF CONTRACTING OFFICER'S REPRESENTATIVE

Donald Smouse
Reservation Programs Officer
U.S. Department of Interior
Bureau of Indian Affairs
Western Washington Agency
3006 Colby - Federal Building
Everett, Washington 98201

SHOALWATER BAY INDIAN TRIBE

PROGRAM STUDY & REDESIGN

CONTRACT PROPOSAL

BUDGET

1.	Salary		$10,008.00
2.	Fringe Benefits		1,501.20
3.	Travel:		
	a. Mileage (5,000 miles @$.15 per mile)		750.00
	b. Per Diem (30 days @$33.00 per day)		990.00
4.	Training & Technical Meetings (Registration)		250.00
5.	Office Rental		360.00
6.	Equipment Rental		
	a. IBM Typewriter	$432.00	
	b. Photocopier	240.00	
			672.00
7.	Supplies		500.00
8.	Utilities		400.00
9.	Telephone Service		900.00
10.	Audit & Legal Services		100.00
11.	Consultants		1,000.00
			$17,431.20

ATTACHMENT (1)

SHOALWATER BAY INDIAN TRIBE

PROGRAM STUDY & REDESIGN

CONTRACT PROPOSAL

BUDGET

1.	Salary		$ 834.00
2.	Fringe Benefits		125.10
3.	Travel:		
	a. Mileage		62.50
	b. Per Diem		82.50
4.	Training & Technical Meetings (Registration)		20.83
5.	Office Rental		30.00
6.	Equipment Rental		
	a. IBM Typewriter	$36.00	
	b. Photocopier	20.00	
			56.00
7.	Supplies		41.66
8.	Utilities		33.00
9.	Telephone Service		75.00
*10.	Audit & Legal Services($100)		
**11.	Consultants ($1000.00)		
			$1,360.59

* Audit & Legal Services will be used in the last month of contract period only.

** Consultants will be used only if they are needed in the implementation of contract

ATTACHMENT (2)

SHOALWATER BAY INDIAN TRIBE

JOB DESCRIPTION

PROGRAM PLANNER

RESPONSIBILITY:

THE PROGRAM PLANNER SHALL WORK UNDER THE GENERAL SUPERVISION OF THE BUSINESS MANAGER, SHOALWATER BAY INDIAN TRIBE.

DUTIES:

1. Make a complete study of Bureau of Indian Affairs, State and other Federal agency's program service and information delivery.

2. Make a complete study of those services the Shoalwater Bay Indian Tribe and Members are entitled to and are not receiving.

3. Set up various models of more effective service and information delivery to the tribe.

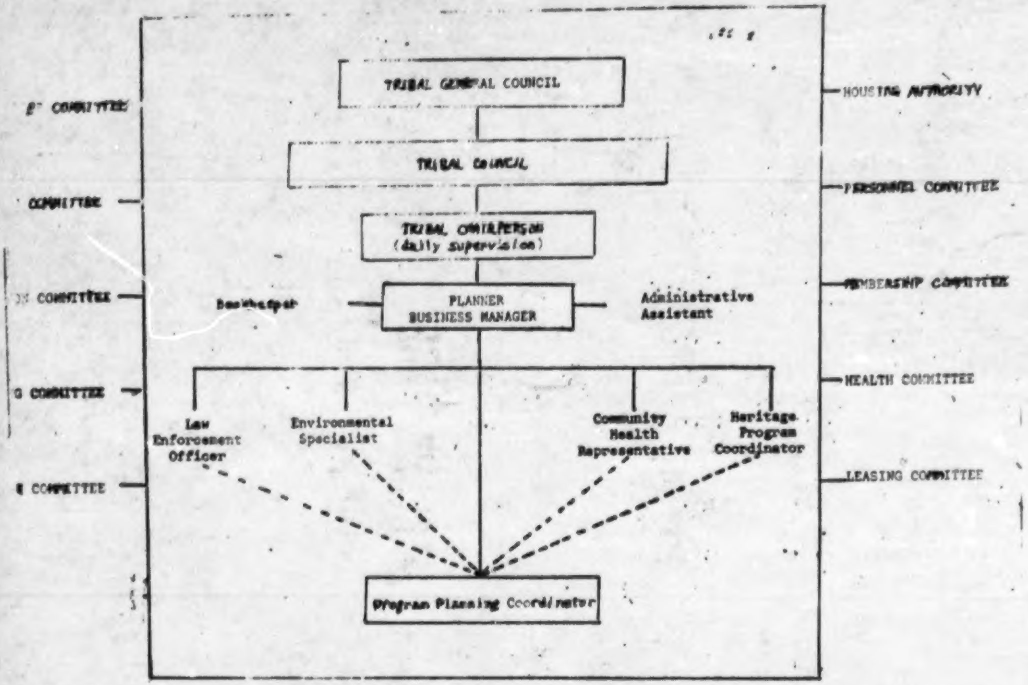
QUALIFICATIONS:

1. High School Deploma or GED
2. Experience in Program Administration
3. Knowledge of Grant and Contract writing and maintenance.
4. Ability to communicate will all age groups both orally and in writing.
5. Must be able to work with minimum supervision.
6. Typing ability preferred.

PREFERENCE WILL BE GIVEN TO QUALIFIED INDIANS REGARDLESS OF AGE, RELIGION OR SEX.

ATTACHMENT (3)

SHOALWATER BAY ORGANIZATION



ATTACHMENT (4)